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HEARING  
SENATE RULES COMMITTEE  
STATE OF CALIFORNIA



STATE CAPITOL  
ROOM 113  
SACRAMENTO, CALIFORNIA  
THURSDAY, MAY 21, 2008  
2:00 P.M.

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1 SENATE RULES COMMITTEE

2 STATE OF CALIFORNIA

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6 HEARING

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10 STATE CAPITOL

11 ROOM 113

12 SACRAMENTO, CALIFORNIA

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15 WEDNESDAY, MAY 21, 2008

16 2:00 P.M.

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24 Reported by:

25  
26 Evelyn J. Mizak  
27 Shorthand Reporter



APPEARANCESMEMBERS PRESENT

1 SENATOR DON PERATA, Chair

2 SENATOR JIM BATTIN, Vice Chair

3 SENATOR GIL CEDILLO

4 SENATOR ROBERT DUTTON

5 SENATOR ALEX PADILLA

STAFF PRESENT

6 GREG SCHMIDT, Executive Officer

7 PAT WEBB, Committee Secretary

8 NETTIE SABELHAUS, Appointments Consultant

9 JULIE NYSTROM, Consultant to SENATOR BATTIN

10 DAN SAVAGE, Consultant to SENATOR CEDILLO

11 CHRIS BURNS, Consultant to SENATOR DUTTON

12 MARIVEL GOMEZ, Consultant to SENATOR PADILLA

ALSO PRESENT

13 KATHLEEN R. BRUGGER, Member  
14 Teachers' Retirement Board

15 ELIZABETH D. ROGERS, Member  
16 Teachers' Retirement Board

17 SENATOR ABEL MALDONADO

18 JOHN C. DUNCAN, Director  
19 Department of Industrial Relations

20 ROBERT A. JONES, Deputy Secretary  
21 Labor and Workforce Development Agency

22 ANTHONY P. SAUER, Director  
23 Department of Rehabilitation

24 LUCIANA C. PROFACA, Ph.D., Chief Deputy Director  
25 Department of Rehabilitation



1 DAN KYSOR, Director  
2 Governmental Affairs  
3 California Council of the Blind

4 PAT McPARTLAND  
5 Association of California State Employees with Disabilities

6 MICHAEL HATCH, Chairperson  
7 California Vendors Policy Committee

8 ELIZABETH PAZDRAL, Director  
9 State Independent Living Council

10 MICHAEL DOWLING  
11 Randolph-Sheppard Vendors of California

12 JOHN T. KEHOE, Chairman  
13 Rehabilitation Appeals Board

14 ANN GUERRA  
15 Nevada-Sierra IHSS Public Authority  
16 FREED CIL

17 MARTY OMOTO  
18 California Disability Community Action Network

19 ROBERT BENSON  
20 Consumer and CDCAN Advocate

21 DOUG PASCOVER, Director  
22 Arriba

23 TERESA FAVUZZI, Executive Director  
24 California Foundation for Independent Living Centers

25 DONNA CALAME  
26 San Francisco IHSS Public Authority  
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12                  COLLENE T. CAMPBELL, SCOTT B. HIMELSTEIN,  
13                  and DEBORAH E. LINDEN



## P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN PERATA: I apologize for the half-hour delay. Obviously it didn't help matters, but we tried. We have a quorum.

What I'd like to do is to take Items E and F for the retirement board out of order. Won't take very long. I think they're in good shape.

Kathleen Brugger and Elizabeth Rogers, come up together.

SENATOR MALDONADO: May I say few are words about Ms. Rogers?

CHAIRMAN PERATA: I can only tell you that he's about to massively compromise you.

[Laughter.]

SENATOR MALDONADO: I know this is going to hurt Beth, but she doesn't know.

I've known Beth Rogers for a long, long time. She's from Santa Barbara, and she's done great things for the people of California.

This Committee has appointed her to this board before. She's here for reappointment.

And I must tell you that no one works harder than Beth Rogers. I just wanted you to know that, Mr. Pro Tem and Members of this Committee.

CHAIRMAN PERATA: Thank you.

SENATOR DUTTON: And Mr. President, if it would please you, I'd like to also introduce Kathy Brugger.

1 I've known Kathy for a number of years. We've  
2 worked together at the Chambers of Commerce, a lot of community  
3 projects down in Rancho Cucamonga. She's been an active member  
4 of the school board down there. She started out with the  
5 Ontario Monclair School District, and now she's Community  
6 College Board of Trustees down there.

7 She's always been well received by everybody  
8 she's dealt with, and I certainly would recommend her highly.

9 And don't hold it against her, either, that she  
10 knows me.

11 CHAIRMAN PERATA: Is there any Democratic support  
12 for either of these?

13 [Laughter.]

14 CHAIRMAN PERATA: Just kidding.

15 Well, welcome. Do you want to say a few words  
16 maybe to defend yourself?

17 MS. BRUGGER: Well, I think that I wanted to just  
18 say that I've been on the school board for 30-plus years. And  
19 that I feel very gracious that you have me here before you.

20 And that I would be happy to -- you know, any  
21 questions that you have, I would be happy to give you some  
22 answers.

23 CHAIRMAN PERATA: Thank you.

24 MS. ROGERS: I have very much enjoyed serving on  
25 the STRS Board. I have a background in education. I have a  
26 Ph.D. and taught at U.C.L.A. and a daughter who teaches, and a  
27 mother who teaches. I think it's like many other families. Our  
28 family was built on teaching.

1           And also I have a business background, and I've  
2 particularly enjoyed being Chair of the Audit Committee. I  
3 think in an era where Sarbanes Oxley is so important, and we've  
4 pushed at STRS to get good corporate governance, we need to make  
5 sure our own shop is in order. We're working on developing --  
6 we have more financial experts coming in, more auditing, looking  
7 at corporate governance. And I'm very interested in trying to  
8 be of special assistance in the financial area.

9           Happy to answer any questions.

10          CHAIRMAN PERATA: On the teacher retirement, we  
11 over the years have been talking to members of STRS about the  
12 fact that teachers reach the age 65, and the health benefits are  
13 not provided.

14          First of all, there's an apparent inequity  
15 between what teachers do and what others in public service do,  
16 and that's kind of troublesome.

17          But given the fact that we're asking teachers to  
18 enter a career now which is probably more difficult than it's  
19 ever been as far as I'm concerned, it is something that also has  
20 an economic incentive. And I think every edge we can get these  
21 days, we should have.

22          I'd just be interested in your views on that  
23 problem and potential solution.

24          MS. BRUGGER: You're absolutely correct.

25          As far as the health benefits, this is something  
26 we have to look into. And I know that personally -- I won't  
27 speak for the rest of the board -- but personally, I know some  
28 things that I've gone through recently, and it brought it home.



1                   And I would just state that you certainly have an  
2 advocate in me, and I'm sorry for the tears.

3                   CHAIRMAN PERATA: Thank you.

4                   We have a motion to approve.

5                   [Laughter.]

6                   MS. BRUGGER: Sorry about that.

7                   CHAIRMAN PERATA: No, that's no problem.

8                   MS. ROGERS: Kathy's just survived a bout with  
9 cancer, and we're very glad to have her back on the board. I  
10 think she's intimately aware of what happens when you have to  
11 struggle with both health issues and --

12                  CHAIRMAN PERATA: If you want a drink, there's a  
13 bottle up in my office.

14                  [Laughter.]

15                  MS. BRUGGER: Thank you.

16                  MS. ROGERS: I think we feel that it's one of the  
17 key issues that's eating into the retirement for the teachers,  
18 because you now have to take so much money from your retirement,  
19 which, when you sent this 85 percent of purchasing power, so on  
20 and so forth, you have this accelerating health care cost. So,  
21 it's not only a problem in and of itself; it's a problem in  
22 overall view what the retirement package is.

23                  And this has been made a priority at STRS. We  
24 authorized a task force. It brought its first draft of a report  
25 in March. We're going to be reviewing it in June. They have a  
26 series of recommendations, and I think we'll be coming back with  
27 requests potentially for legislation in the next year.

28                  And we're very committed to trying to find an

1 answer for our teachers for their health care.

2 I think it's just very unfortunate that  
3 historically, it wasn't set up in STRS, and I think all of us  
4 who've lived this in one -- I'm in the private sector. Health  
5 care used to be a give-away. I mean, you know, you'd put \$50 a  
6 month, and what, it would be done. It would fall well within  
7 budgets.

8 And I think what we're seeing that is really  
9 frightening is, that teachers that do have health care, they  
10 have it out of their local public school district. And all of  
11 them are now under pressure, and it's starting with the small  
12 ones, moving to the big ones, that you are yanking the health  
13 care they did have.

14 So, STRS was always relying on our local school  
15 boards to provide the health care component for the teachers,  
16 which was individually negotiated at that level. So, by not  
17 having that originally in STRS, not having -- it just wasn't the  
18 mandate, it wasn't the mission, and no one really looked at it  
19 that way.

20 Now we're further behind than at PERS. And  
21 there's also a possibility PERS can help us with some of the  
22 teaching burden -- I mean, some of the administrative burden of  
23 setting this up. We're having a dialogue with them.

24 But, it's on agenda in June, and it's the top  
25 priority.

26 CHAIRMAN PERATA: I'm glad to hear that. I think  
27 that pre-Prop. 13, for all the wonderful things Prop. 13 did,  
28 one thing happened. When the ad valorem rate was set by the

1 local school districts, who decided what kind of an education  
2 they wanted their kids to have, they could take care of the  
3 teachers. This thing just got lost in the shuffle.

4 As you know all too well, given what teachers  
5 retire at, their entire life could be eaten up in a year on a  
6 bad health rap.

7 MS. ROGERS: And I think what's so frightening  
8 that we see coming, if you take -- small businesses are dropping  
9 out because they can't cover. Now the small school districts  
10 are dropping out because they can't cover, and we're shrinking  
11 our pool, so who's left isn't going to be able to cover it. I  
12 mean, this is a contracting -- contracting world.

13 CHAIRMAN PERATA: Thank God we have the Lottery.

14 MS. ROGERS: There you go, right.

15 CHAIRMAN PERATA: We can cover all of those.

16 [Laughter.]

17 MS. ROGERS: We'll work it out. It'll work out.

18 CHAIRMAN PERATA: Do either of you have family  
19 here?

20 MS. ROGERS: No, but my husband is President of  
21 Fish and Game. He said he'd be here if you hadn't assigned him  
22 down to Stockton today to work on the fish and the game.

23 CHAIRMAN PERATA: Is he fishing in Stockton  
24 today?

25 MS. ROGERS: He's fishing in Stockton today with  
26 Fish and Game.

27 [Laughter.]

28 CHAIRMAN PERATA: See how they're biting, yeah.

1 That's a tough job.

2 What are those little things called?

3 MS. ROGERS: The Delta Smelt. They're actually  
4 down doing that today.

5 CHAIRMAN PERATA: And we make fun of that.

6 Do we have a motion to approve?

7 SENATOR BATTIN: Move.

8 CHAIRMAN PERATA: Anybody here that wants to come  
9 up and say yes or nor?

10 We have a motion for both. Please call the roll.

11 SECRETARY WEBB: Cedillo.

12 SENATOR CEDILLO: Aye.

13 SECRETARY WEBB: Cedillo Aye. Dutton.

14 SENATOR DUTTON: Aye.

15 SECRETARY WEBB: Dutton Aye. Padilla. Battin.

16 SENATOR BATTIN: Aye.

17 SECRETARY WEBB: Battin Aye. Perata.

18 CHAIRMAN PERATA: Aye.

19 SECRETARY WEBB: Perata Aye. Four to zero.

20 CHAIRMAN PERATA: Four-zero, we'll leave the roll  
21 open for Mr. Padilla.

22 Thank you both, and thank you for all that you  
23 do. Congratulations.

24 MS. BRUGGER: Thank you very much.

25 MS. ROGERS: Thank you.

26 [Thereafter, SENATOR PADILLA  
27 voted Aye, making the final  
28 vote 5-0 for confirmation.]



1 CHAIRMAN PERATA: John Duncan.

2 The next two, John and Mr. Jones, will be  
3 testimony only. We've already had the hearings on both  
4 gentlemen.

5 You didn't bring your family with you this time?

6 MR. DUNCAN: They're watching.

7 CHAIRMAN PERATA: You see, I told you. We could  
8 pick them off when they're not here. That's a great idea,  
9 Nettie.

10 [Laughter.]

11 CHAIRMAN PERATA: Mr. Duncan, you responded very  
12 quickly, but just for the record, the Committee asked for some  
13 information when you came back. You provided it very timely.  
14 Why don't you tell us what it was.

15 MR. DUNCAN: Thank you.

16 When I was last before you, I said we were --  
17 actually what I said was, we were dotting the T's and crossing  
18 the I's, which -- on the PD schedule. Hopefully, that's not  
19 what is on the schedule published. Otherwise, we'd better do a  
20 little spell checking.

21 That being said, what we did do, you asked for  
22 progress. Basically, where are we on the permanent disability  
23 schedule, where is the report.

24 And since our last meeting, we have posted the  
25 proposed regulations for informal comment on that Friday  
26 succeeding the hearing. We expect to file the regulations the  
27 Office of Administrative Law on Tuesday, May 27th, and hold  
28 public hearings in Los Angeles and Oakland during the week of



1 July 20th. So, those are the specific plan and dates for -- for  
2 the regulations.

3 CHAIRMAN PERATA: Is that commentary period open  
4 that entire time?

5 MR. DUNCAN: The commentary period literally was  
6 -- is open the entire time, yes. And in fact, the specific  
7 regulations proposal were published as done in division even  
8 pre-regulatory fashion. So, they're on the web site and  
9 accepting sort of preliminary hearing comments as we speak. So,  
10 that's all going on, and there's feedback right now.

11 The proposal generally is based on the latest  
12 empirical data, and it results in upward adjustments to all  
13 types of injuries, which results in increased benefit payments.  
14 Just briefly, the largest increases are in some of the most  
15 commonly -- common injury categories, including back and hand.

16 The proposal also removes any downward age  
17 adjustments. So from then on, all age adjustments will be  
18 upward.

19 In general, increases -- the proposal would  
20 increase permanent disability payments 16 percent. This is the  
21 beginning of a rule making process. And our goal is, our target  
22 date is to have a new set of a new regulatory rating schedule in  
23 effect the first of the year '09. Again, change along the way,  
24 but that's the nature of the -- the hearing process.

25 CHAIRMAN PERATA: Who makes the final  
26 determination?

27 MR. DUNCAN: There are various -- this is  
28 obviously -- the workers' comp is a very important and

1 complicated subject. The reform has multiple aspects to it. I  
2 -- the regulations itself, the administrative director is the  
3 authority to issue regulations, and obviously the administrative  
4 director does -- is within the Department of Industrial  
5 Relations. So ultimately, the authority on the regulations are  
6 within our department.

7 There's other policy issues, and there are issues  
8 that cannot be addressed administratively -- weeks, payments,  
9 and other aspects -- that would necessarily be handled in the  
10 legislative arena.

11 CHAIRMAN PERATA: I know there's been a lot of  
12 vacancies in your department, but we do have somebody in that  
13 position now?

14 MR. DUNCAN: Yes, we do.

15 CHAIRMAN PERATA: That person has a name?

16 MR. DUNCAN: That person's name is Carrie Nevins.

17 CHAIRMAN PERATA: She works under you?

18 MR. DUNCAN: She works under me, yes.

19 CHAIRMAN PERATA: I won't you ask to venture an  
20 opinion, then.

21 I thought it was 12 percent, but if it's 16  
22 percent, we'll split the difference and call it 14.

23 Do you think of all the data that you've seen,  
24 that has the right feel to it?

25 MR. DUNCAN: I think it's a -- a right step. I  
26 mean, it's hard -- this is a very complicated scenario. Some of  
27 this -- even the legislation that was passed required -- said  
28 that this -- we should come out with after five years of data.

1 Here, there's comparisons which made one of the reasons for, you  
2 know, the arguably the delay. You're comparing pre-2005, which  
3 was a whole different, as you well know, schedule and scenario  
4 with post. So, we're comparing data from these two eras.

5 So, I think it's definitely a reasonable  
6 proposal. And I think we -- going forward.

7 CHAIRMAN PERATA: So, that'd be like: It's a  
8 good start.

9 MR. DUNCAN: It's a good start.

10 CHAIRMAN PERATA: Okay.

11 Any other questions?

12 You did what we asked you to do. I only ask you  
13 to look over everybody's shoulder. I think during the  
14 commentary period there will be ample opportunity to turn it  
15 upside down by the ankles and shake it.

16 You've shown that you have an interest in this  
17 and a feel for it. As part of your responsibilities, I would  
18 encourage you to continue that.

19 So, we have a motion to approve. Call the roll,  
20 please.

21 SECRETARY WEBB: Cedillo.

22 SENATOR CEDILLO: Aye.

23 SECRETARY WEBB: Cedillo Aye. Dutton.

24 SENATOR DUTTON: Aye.

25 SECRETARY WEBB: Dutton Aye. Padilla.

26 SENATOR PADILLA: Aye.

27 SECRETARY WEBB: Padilla Aye. Battin.

28 SENATOR BATTIN: Aye.

1 SECRETARY WEBB: Battin Aye. Perata.

2 CHAIRMAN PERATA: Aye.

3 SECRETARY WEBB: Perata Aye. Five to zero.

4 CHAIRMAN PERATA: Five-zero, congratulations.

5 MR. DUNCAN: Thank you so much. I appreciate it.

6 CHAIRMAN PERATA: And your family's welcome to  
7 come back at any time.

8 [Laughter.]

9 MR. DUNCAN: I appreciate it, thank you.

10 SENATOR PADILLA: Can I add on to the previous  
11 vote?

12 CHAIRMAN PERATA: Yes.

13 SECRETARY WEBB: Padilla.

14 SENATOR PADILLA: Aye.

15 SECRETARY WEBB: Padilla Aye.

16 CHAIRMAN PERATA: Mr. Jones, when we last met in  
17 a different room, we had concluded the public testimony. You  
18 had indicated that there was one document you hadn't had a  
19 chance to see and review.

20 There was plenty of discussion, or at least the  
21 presentation was made about number of things that I'm sure you'd  
22 like to respond to, so it's all yours.

23 MR. JONES: Committee Members, and Mr. Chairman,  
24 I'm very pleased to finally have the opportunity to appear  
25 before you to address any questions you may have concerning my  
26 confirmation as Deputy Secretary of Policy Enforcement for the  
27 Labor and Workforce Development Agency.

28 I'm aware you have a large agenda, and I want to



1 be respectful of your time. I do feel, however, that it's  
2 important that I be permitted to provide at least a summary  
3 response to the comments made by some of the lawyers and  
4 representatives that testified in opposition of my confirmation  
5 last Thursday.

6 Of course, they raised a number of complex  
7 issues, some of which are currently in active litigation before  
8 the courts and the State Personnel Board. For me to be able to  
9 fully respond to all the issues could take hours, and I know we  
10 don't have that luxury here. I can, however, give an  
11 abbreviated 15-minute version if that's permissible. Thank you.

12 Right up front, I want to assure all of you that  
13 I'm fully resigned to the fact that Mr. Curtin probably will  
14 never be a close personal friend of mine, but I -- the  
15 underlying facts he raised concerning the ethical issues I  
16 immediately faced in the DLSE law department when I came on in  
17 August of 2005 have presented a puzzle to many of those not  
18 directly involved in this matter.

19 It was very surprising that Mr. Lorens elected to  
20 come before you last Thursday, as her testimony has presented  
21 many of the most important pieces needed to put that puzzle  
22 together. So, I want to her testimony right up front with  
23 respect to Miles Locker's termination and other ethical issues  
24 that I faced.

25 I need to preface those comments with the fact  
26 that when I came on board as Labor Commissioner's Chief Counsel  
27 on August 1st, 2005, an investigation of Mr. Locker's conduct in  
28 intentionally and secretly leaking an internal-use-only memo to

1 the plaintiff in a recently filed lawsuit against the Labor  
2 Commissioner, Donna Dell, was well under way. In fact,  
3 Mr. Locker was not actually terminated until after an 8-month  
4 investigation had been completed, a 23-page formal Notice of  
5 Disciplinary Action, and supporting 791 pages of documents had  
6 been prepared and delivered to Mr. Locker. This was over six  
7 months after I arrived.

8 During all this time, Mr. Locker remained on full  
9 pay. As Ms. Dell states in her letter that she asked me to  
10 deliver to you last week, Mr. Locker's termination was caused by  
11 his election to censure the information he was providing to her  
12 as his client, while at the same time privately meeting with and  
13 providing internal documents to plaintiffs and attorneys who  
14 were engaged in litigation against her, his client.

15 That brings me to testimony last week by  
16 Ms. Lorens. As she stated, Ms. Lorens is currently the  
17 plaintiff's attorney in a large class action meal and rest  
18 period case against the Brinker Restaurant Corporation.

19 As you may also remember, Mr. Curtin mentioned  
20 that Mr. Locker had prosecuted and settled a major meal and rest  
21 period case for \$10 million on behalf of the Labor Commissioner  
22 in 2002. That case was against the same defendant, the Brinker  
23 Restaurant Corporation. In fact, Mr. Locker's settlement of  
24 that meal and rest period case against Brinker covered much of  
25 the same time period as the time of Ms. Lorens' subsequent meal  
26 and rest period case against that same defendant.

27 In the prior DLSE lawsuit, Mr. Locker was  
28 assisted by another former attorney for the Labor Commissioner,



1 Mr. Timothy J. Kolesnikow. Mr. Kolesnikow left DLSE almost  
2 immediately after he and Mr. Locker settled the DLSE case  
3 against Brinker in August 2002 and went into private practice.

4 If you recall, last week Ms. Lorens urged that I  
5 should not be confirmed because of my actions in her against  
6 Brinker. She said I had personally made it difficult for her to  
7 get documents she needed for the prosecution of her class action  
8 lawsuit, and that I had somehow favored the defense counsel in  
9 her case.

10 This brings us to why I was surprised she  
11 testified against me. On March 14, 2006, I received an e-mail  
12 from an attorney who was defending a company in a private  
13 lawsuit that had been brought concerning allegations of failure  
14 to provide the company's employees with meal and rest breaks.  
15 That company was Brinker.

16 Before this date, I was not aware that this same  
17 company had settled a lawsuit brought by the Labor Commissioner  
18 over the same issues in 2002. As part of that settlement, the  
19 company paid the \$10 million Mr. Curtin referred to.

20 I was also unaware that Mr. Locker had been the  
21 lead attorney for the Labor Commissioner, along with  
22 Mr. Kolesnikow, in the 2002 case. I learned later that the new  
23 private lawsuit that had been brought against Brinker was filed  
24 by Ms. Lorens.

25 The defense attorney who wrote me stated he was  
26 concerned about a letter his firm had received from our office  
27 in early 2005, in which we falsely informed his firm that after  
28 a statewide search of our offices and data bases, we could find

1 no records of our prior lawsuit against his client, the Brinker  
2 Corporation. The defense attorney who received this response of  
3 no records had since become aware that even before his office  
4 had made its Public Records Act request in 2005, copies of  
5 documents had been supplied to Ms. Lorens by our office, and  
6 that she was now refusing to share those documents with opposing  
7 counsel.

8 I had the matter look into immediately and was  
9 informed the documents were in fact supplied to Ms. Lorens by  
10 DLSE over a year before I received this inquiry. But we could  
11 not identify what was given to Ms. Lorens, as no record had been  
12 made regarding the request except for a log entry that showed  
13 that the response to the items in question was handled by Miles  
14 Locker.

15 This false certification was, at the very least,  
16 a serious breach of our statutory duties under the Public  
17 Records Act. This was especially true, given our having already  
18 provided them to the other side.

19 I directed that an apology be sent to defense  
20 counsel and that we immediately supply the appropriate documents  
21 to them.

22 Unfortunately, this was not the only improper  
23 conduct by us in this case. Two weeks later, on March 30, 2006,  
24 I received a letter from Brinker's Assistant General Counsel  
25 informing me that almost one year -- for almost one year,  
26 Brinker had been repeatedly attempting to secure a letter from  
27 Mr. Locker that the DLSE was legally required to provide to  
28 Brinker under the terms of the prior settlement agreement that

1 he had negotiated and signed in August of 2002. The agreement  
2 required DLSE to issue a written statement admitting that DLSE  
3 had conducted an extensive year-long investigation of Brinker  
4 Restaurant Corporation with respect to its compensation  
5 practices from October 1, 1999 to December 31, 2001 in regards  
6 to compliance with, among other items, meal and rest periods as  
7 required by the relevant wage order and Labor Code sections.  
8 This was the same issue, covering the same period of time, that  
9 Ms. Lorens was now suing Brinker on again.

10 I immediately forwarded defense counsel's letter  
11 to the attorney assigned to supply the previously requested  
12 documents to Brinker's attorney -- attorneys -- with  
13 instructions to immediately supply the require letter also.

14 I found out over a month later that my attorney  
15 never prepared or sent the letter to Brinker as I directed. She  
16 told me she just hadn't gotten around to it yet. So, I assigned  
17 it to another attorney in my office, and it was issued that same  
18 day.

19 Then in mid-May 2006, the same previously  
20 assigned attorney from my office informed me that Ms. Lorens had  
21 sent her a sworn declaration for signature by Mr. Kolesnikow,  
22 our former attorney on that case, that he and Mr. Lorens wanted  
23 my attorney to review and approve for filing in her case.  
24 Mr. Kolesnikow was the former Labor Commissioner attorney who  
25 had prosecuted the prior case with Mr. Locker.

26 Because this declaration contained privileged  
27 work product information of the Labor Commissioner, including  
28 opinions by the Labor Commissioner's former attorney, as to why

1 certain actions were taken in the earlier case, I and my  
2 assistant chief counsel determined that it could not be utilized  
3 without constituting a waiver of the Labor Commissioner's  
4 privilege.

5               Based upon my concern about such possible waiver,  
6 I sent a personal 8-sentence letter to all counsel, informing  
7 them of my decision without disclosing the contents of the  
8 declaration. It was this letter that Ms. Lorens referred to  
9 last week as being "scary" and having caused her and  
10 Mr. Kolesnikow to, quote, "fear criminal prosecution."

11              Ms. Lorens has already provided you with a copy  
12 of that letter, and I also have copies here.

13              I am still perplexed as to why this letter caused  
14 these two experienced trial lawyers so much personal concern.

15              In any event, at that point I was hopeful that we  
16 were indeed through with our problems with Ms. Lorens' case.  
17 And of course, I was wrong.

18              Within a few days of my letter concerning the  
19 Kolesnikow declaration, my previously assigned attorney informed  
20 me that we had, quote, "inadvertently" unquote, supplied legally  
21 protected records of Brinker to Ms. Lorens' firm in this case.  
22 That same attorney informed me that providing those records was  
23 in fact a misdemeanor, and in fact it is.

24              At this point, I was having some very serious  
25 concerns about the state's possible legal liability for our  
26 repeated improper actions that were benefiting only the  
27 plaintiffs in Ms. Lorens' lawsuit against Brinker. I  
28 immediately asked if my attorney had notified the defense



1 counsel we had made this improper disclosure of their client's  
2 confidential documents, that included the employer's and  
3 employees' names and Social Security numbers, and was told that  
4 she had not.

5           So, on May 30, 2006 I sent an e-mail to her,  
6 asking what possible legal basis she thought we could have for  
7 not letting Brinker know of our most recent mistake in  
8 improperly releasing the confidential records of its employees.  
9 When I got no reply, I sent another e-mail the next day. On June  
10 1st, she sent me a reply stating that she guessed she had mixed  
11 feelings about the need for us to disclose this matter to the  
12 defense attorneys.

13           Since there could be no question that we had an  
14 absolute legal and ethical obligation to immediately send this  
15 information to Brinker's counsel, I ordered her to prepare the  
16 letter for my review. I received the draft of the letter from  
17 her six days later. I then directed that it be sent.

18           Please understand that all of this was occurring  
19 during the time I was making very serious efforts to have DLSE  
20 recover from the prior unethical conduct of Mr. Locker, and to  
21 secure for DLSE a public reputation of integrity and fairness to  
22 all parties.

23           I believe it was at this point that I first began  
24 to really appreciate Ms. Dell's decision to leave the Labor  
25 Commissioner and return to private practice. However, I pressed  
26 on. I wondered what else we could possibly do to make it appear  
27 we were intentionally inferring in Brinker's defense of  
28 Ms. Lorens' private class action lawsuit against it.

1                   You can imagine my surprise then when, in May of  
2                   2007, I received an automatic notification from the court of  
3                   appeal that Mr. Locker had joined the case as the attorney for  
4                   an amicus group that was supporting Ms. Lorens' case against  
5                   Brinker. When Mr. Locker subsequently orally argued the case  
6                   before court of appeal, I had further legal liability concerns.

7                   There's one thing about the entire issue of  
8                   attorney misconduct that I want to make certain is in the  
9                   record. I have never had any concerns whatsoever about the  
10                  trustworthiness of any but a very few of the attorneys who  
11                  worked under my supervision for the almost two years I was Chief  
12                  Counsel at DLSE. I found almost all of them to be highly  
13                  dedicated lawyers who had no desire to act in any but the most  
14                  ethical manner. In fact, the support I've been receiving this  
15                  past week from a number of them and many other DLSE employees  
16                  has been truly gratifying.

17                  With respect to the comments last week by  
18                  Ms. Lorens and the other outside attorneys and employee  
19                  representatives, I can only say that I'm disappointed that those  
20                  with ongoing litigation and case presently pending before the  
21                  State Personnel Board have chosen this venue to seek some sort  
22                  of advantage.

23                  I have a timeline with me and copies of all the  
24                  relevant documents for everything that I've said up to this  
25                  point, and I'd be happy to leave those with you when we get  
26                  through here.

27                  With that abbreviated explanation of the lawyer  
28                  ethics problems I encountered upon joining the Labor



1 Commissioner as her Chief Counsel and later as the Acting Labor  
2 Commissioner myself, I'd like to very briefly comment on the  
3 statistics offered last week to show that I somehow failed as  
4 the Acting Labor Commissioner to enforce the Labor Code and to  
5 collect wages for employees.

6 Simply put, those who testified to this  
7 contention appear to have been relying exclusively on statistics  
8 on our web site that relate only to the DLSE Bureau of Field  
9 Enforcement. It's clear from their explanation that they simply  
10 don't understand what these public figures actually show.

11 To do this, I'd like to give you, the Committee,  
12 a table of what's there, if that's possible.

13 The first issue that was raised was wage  
14 collections, which happens to be the first table. Let me tell  
15 you really quickly what this is. This is from our web site,  
16 from DLSE's web site. It shows these items broken down by year  
17 as reported.

18 The issue we're talking about generally is wages  
19 that are collected. This is not wages that are assessed. This  
20 is wages that are actually collected.

21 I've broken out the public works aspect of this  
22 because, as you'll see, that runs its own course and I can  
23 explain what's going on there.

24 But with respect to wage collections, the first  
25 contention made was that in 2006, when I was Acting Labor  
26 Commissioner, and that's true, we collected fewer wages from  
27 workers than we show we collected in other years, with special  
28 emphasis being placed on 2002. And initially I want to stress

1 that, as can be seen from the table, 2002 is a real anomaly if  
2 you look at the wages. It's twice what was collected in the  
3 prior year, and twice what was collected in subsequent year.

4 It also happens to be the same year the \$10  
5 million settlement with Brinker was concluded.

6 I have checked with our collection office, and  
7 because of the money that comes in, and the way it was done in  
8 those days -- I'll tell you in a minute how I've tried to fix  
9 this, it's -- they would allocate money sometimes to BOFE wage  
10 collection, sometimes to litigation. And remember, we bring in  
11 another \$40 million a year from our wage claims adjudication  
12 unit. So, how the money is allocated has always been rather  
13 fluid, and Ms. Dell and I tried to put some restrictions on  
14 that, and I think they're working. I'll explain that to you.

15 This type of allocation was a practice Labor  
16 Commissioner Dell and I stopped in 2005, which was allocating  
17 monies that came in from lawsuits from prior years to the BOFE  
18 amounts for that year. We did this because to include these  
19 amounts presents a distorted picture of what our Bureau of Field  
20 Enforcement is actually doing in any one year. Often such legal  
21 settlements are unrelated to any BOFE activity.

22 In fact, had I elected to include the \$7.75  
23 million settlement with Denny's Ms. Dell and I entered into in  
24 2006, that 4.6 million figure would be 12.35 million. We didn't  
25 do that.

26 What is even more important, however, is -- and  
27 this is the very basic understanding of this -- is that the wage  
28 collection figures for any year actually reflect Bureau of Field

1 Activities [sic] Enforcement activities in prior years. This is  
2 because wage recoveries are the result of audits usually that  
3 are first performed by the employers and then verified by our  
4 Bureau personnel. These audits almost always take at least six  
5 months or more to complete. We then often need to take legal  
6 action to enforce the amounts found due even when -- before we  
7 collect them.

8 Even when the employers agree to pay what they  
9 owe, payment plans are often worked out with the employers so  
10 that they can continue to operate and employ the employees.

11 Keeping in mind that I was Acting Labor  
12 Commissioner until June of 2007, I think it should be easy to  
13 see that the results of my enforcement activities are more  
14 accurately reflected by the 2007, \$13.6 million figure.

15 The second chart -- the second complaint that was  
16 in one or a couple of the letters actually, was about  
17 inspections and citations in 2006. Again, you'll see the 2002  
18 figures that I was being compared against are unusually high.

19 I've been informed that we cannot verify what  
20 made up the 2002 inspection figures. However, we need again to  
21 understand why the six figures are as they are.

22 There are many factors to be considered, but  
23 here's the most important one. If you'll look again at  
24 inspection and citation figures from 2003 to 2006, you'll see  
25 that they've been steadily decreasing. You will also see that  
26 the efficiency reflected in the number of citations to  
27 inspection had been steadily increasing, and that's the last  
28 column, but not at a rate we wanted.

1                   When I saw these figures in early 2006, I and my  
2 Deputy Chief, Lupe Almaraz, determined that there were two major  
3 problems in BOFE. First, the BOFE investigators were only --  
4 were only responding to complaints and were not doing any  
5 self-initiated inspections of employers.

6                   Second, the investigators had not received any  
7 formal training for a long period of time. I immediately  
8 ordered that all BOFE investigators and all their supervisors be  
9 provided extensive training in what they were required to do,  
10 and immediately start -- and they immediately start engaging in  
11 proactive inspection activity. This training was held  
12 statewide, and I personally attended and participated in all the  
13 sessions. This was all done in 2006.

14                  Again, I think the 2007 figures are a pretty good  
15 indication of how effective we were in what we were doing.

16                  The next to the last one, and these are very  
17 short -- and I really do want to thank you for indulging me  
18 here -- is the license applications. And we have license  
19 revocations, denials and suspensions.

20                  You can see by those figures, they really don't  
21 tell you much, but what the people that are raising this issue  
22 don't seem to understand is, the figures that they're relying on  
23 only reflect appeals of denials, suspensions and revocations.  
24 If we do a good job in denying, suspending and revoking  
25 licenses, there shouldn't be any appeals.

26                  In fact, as you can see from the chart, there  
27 have been no appeals of any revocations in either garment or  
28 farm licensing since 2001, and no appeals of suspensions since



1 2003.

2 Overall, the appeals of denials have been steady  
3 from zero to three since 2002. You have to understand again,  
4 almost all denial appeals are based on actions that were taken  
5 in prior years anyway.

6 The final one is Public Works Debarments. Here  
7 again, debarment actions are based upon repeated violations by  
8 contractors of unusually long periods -- over a long period of  
9 time. They're very serious actions and require a great deal of  
10 investigation and preparation by specialized DLSE attorneys in  
11 Public Works.

12 When I first arrived in 2005, August, I  
13 immediately became very concerned with what I saw was not enough  
14 activity in debarments. I was informed that this was due to the  
15 fact we only had two Public Works attorneys in the division.  
16 One was on leave, disability leave, and those were the only  
17 people who could do this work. And they simply didn't have  
18 sufficient time to undertake these cases.

19 So what did I do? I acted to add two additional  
20 attorneys to the Public Works unit: one for the specific  
21 purpose of increasing debarment activity. And that was my  
22 justification for getting the additional money to add those  
23 people.

24 So as you'll see, debarments have been increasing  
25 since then.

26 Finally, there's one last item I'd like to  
27 clarify before I take your questions, and that's about  
28 Mr. Locker's case. A serious misconception seems to have

1 resulted or may have resulted from some of the things that were  
2 said here last week concerning the status of Mr. Locker's State  
3 Personnel Board appeal of his termination.

4 Mr. Locker has not been either exonerated or  
5 reinstated as a result of his of appeal to the State Personnel  
6 Board. The State Personnel Board very recently in March acted  
7 to reject the proposed decision of the hearing officer in his  
8 case, and to decide the case itself based on the record of his  
9 10 days of hearings, the formal briefs that were filed by his  
10 team of attorneys, and some additional oral argument.

11 In announcing its decision to decide the case  
12 itself, the State Personnel Board attached a copy of the hearing  
13 officer's recommendation in which he determined that Mr. Locker  
14 did in fact engage in multiple acts of misconduct. However, the  
15 hearing officer also recommended that Mr. Locker's discipline be  
16 reduced to a one-year suspension, which is virtually unheard of  
17 in state disciplinary appeals, as it equals over \$150,000 in  
18 lost wages and benefits.

19 I don't know why the State Personnel Board  
20 determined it wanted to decide the case itself, but I do know  
21 that the findings of fact made by the hearing officer fully  
22 support findings of unethical conduct by Mr. Locker in the  
23 performance of his duties as an attorney.

24 Given that this case is still pending before the  
25 State Personnel Board, I want to be careful what I say, as I  
26 certainly don't want to prejudice the case in any way.

27 In closing, I want to thank you for allowing me  
28 the opportunity to set the record straight with respect to what



1 was said here last Thursday, and I'd be pleased to answer any  
2 questions you may have, if I can gather up my stuff a little  
3 bit.

4 CHAIRMAN PERATA: Thank you.

5 Did you take any action? I mean, you cited a  
6 number of different occasions. Just in fact, at what point when  
7 you believe a lawyer is acting unethically do you file a formal  
8 complaint with Bar Association?

9 MR. JONES: I did not file a complaint with the  
10 Bar Association.

11 A complaint, I understand, was filed by the legal  
12 unit, just notifying of the action that had been taken against  
13 Mr. Locker.

14 I haven't been involved in anything with the Bar.

15 CHAIRMAN PERATA: Some of these allegations would  
16 appear to me to be of a criminal nature if they're giving away  
17 documents that belong to the state. I mean, it seems that goes  
18 beyond being unethical. It looks like it's illegal.

19 Did you call on the Attorney General?

20 MR. JONES: No, I didn't.

21 First of all, there's a couple of reasons. I  
22 don't know from what I've been able to find, Mr. Locker was the  
23 only person that put a lot of his stuff in e-mails, which he  
24 elected to save on his computer. All right?

25 And -- and it was -- when I first was presented  
26 with all of the investigatory materials that had been prepared  
27 before I got here, I was shocked.

28 But with respect to this -- the Lorens case, I

1 did have one of the other attorneys take a look at what was  
2 really going on there. And I have to tell you, I don't think we  
3 have sufficient evidence for something of that nature.

4 In fact, it could be argued that we just got  
5 extremely gross negligence in the way we were operating that  
6 department. But I'd hate to think that there wasn't something  
7 going on other than that.

8 CHAIRMAN PERATA: We'll take a ten-minute break  
9 so her fingers don't fall off.

10 [Thereupon a brief recess  
11 was taken.]

12 CHAIRMAN PERATA: Rules Committee will reconvene.  
13 I wanted to talk to you about the gag order that  
14 we were talking about or has been discussed and the memo.

15 Was this the eight lines that you thought was  
16 confusing, or was this something else?

17 MR. JONES: The eight lines that I thought were  
18 confusing was what Ms. Lorens was talking about.

19 The memos I don't think are confusing at all.

20 CHAIRMAN PERATA: If you had it to do over again,  
21 would you?

22 MR. JONES: Would I do exactly the same thing I  
23 did in everything that I've done? Obviously not.

24 CHAIRMAN PERATA: No, just in this one instance.

25 MR. JONES: In this one instance, I would do it a  
26 little differently, but I would do the same thing.

27 This is not something I took lightly or did on my  
28 own. I consulted with ethics experts before I did this. And

1 what I was concerned about -- and there are two memos, and I  
2 think you have both of them, but I have more copies of those,  
3 too.

4 We had the situation that had arisen where  
5 Mr. Locker had gone and given a speech on matters that were in  
6 active litigation against the Labor Commissioner at the time he  
7 gave the speech. She -- she told him in advance, when she --  
8 after she became aware that he was the person who had leaked the  
9 confidential memo to the plaintiff in a case against her, she  
10 told him she did not want him to go and speak on anything that  
11 had to do with her litigation, her policies, that area that she  
12 was responsible by statute to interpret and enforce. And as her  
13 attorney, he did not -- she did not want him to go out and talk  
14 publicly about that, because she was concerned about what the  
15 result would be.

16 The result happened before I got there also, but  
17 very shortly before I got there.

18 He went and gave the speech anyway, where he  
19 publicly ridiculed and criticized the position of his client.  
20 Now, this caused me a great deal of concern because I didn't  
21 think that it was something you had to tell attorneys. You  
22 know, I thought it was pretty -- pretty basic that if you had a  
23 client, you don't go out and publicly ridicule their legal  
24 position, especially in ongoing litigation. Or, you don't go  
25 out and comment why that is wrong, her position is wrong.

26 So, I was very concerned about the impact on the  
27 other attorneys. And I want to make one thing really clear, is  
28 that Mr. Locker had -- was probably the best known attorney in

1 enforcement in the state with respect to the Labor  
2 Commissioner's office. And he brought a lot of attorneys into  
3 the Labor Commissioner's office. He had mentored a lot of  
4 attorneys in the Labor Commissioner's office, and they looked up  
5 to him.

6 And to have someone that they looked up to engage  
7 in this conduct and take the position there's nothing wrong with  
8 it, I didn't want that to become a huge problem. And so, what I  
9 did was, I -- and you can read the memo -- I said how much I  
10 appreciated their willingness to go out and talk -- you know, a  
11 number of department heads in legal departments since have told  
12 me, "I can't get my attorneys to go out and give speeches on my  
13 behalf," and our attorneys always willing to do that -- but that  
14 I wanted a period where we could get the expert in, and that the  
15 outside expert could let the people know what's expected of  
16 them. And so that's what I did.

17 And as soon as we got to the point, I issued a  
18 new policy. And that policy was not a policy the ACLU liked,  
19 but that new policy has been followed ever since, and it has --  
20 as far as I know, we have had absolutely no problems with that  
21 new policy.

22 So, the way -- you know, what I -- the words I  
23 used, I made it clear it was a temporary policy, and that we  
24 were just concerned. And I just didn't want anybody to get put  
25 into that situation, and I certainly didn't want the Labor  
26 Commissioner's legal position to be any further compromised by  
27 her own attorneys.

28 CHAIRMAN PERATA: We heard from somebody that



1 submitted a letter that there was kind of a pall over the  
2 office.

3 MR. JONES: Well, that was -- there are some  
4 attorneys -- there were attorneys that were not pleased with the  
5 fact that -- that I was doing what I thought was -- was  
6 responsible. But there's a lot of attorneys who thanked me.

7 And so, I don't know what to say, other than what  
8 I was trying to do is bring some integrity to our department.  
9 And I just find it curious that I'm here because of that.

10 But I would like these things to play out in the  
11 courts and in the State Personnel Board, and not here.

12 CHAIRMAN PERATA: Okay.

13 I'm going to hold this in Committee. I'm not  
14 quite here yet. There's a lot of hearsay, he said-she said.

15 I think what you said today is important to be  
16 evaluated and not on the run. Have more time on your clock, so  
17 I'm just going to keep it here to give me a little bit more time  
18 to think about it.

19 MR. JONES: You're doing my weight loss program.

20 [Laughter.]

21 MR. JONES: I do have a package of these  
22 documents. And as all of your staff, I think, will tell you,  
23 I'm more than willing to spend all the time that's necessary in  
24 going through this. It's a ten-day hearing just in that one  
25 issue.

26 CHAIRMAN PERATA: I appreciate it.

27 MR. JONES: But I do have those documents, and  
28 I'll leave them here.

1 CHAIRMAN PERATA: Thank you.

2 MR. JONES: Thank you very much for considering  
3 me anyway.

4 CHAIRMAN PERATA: If this weight thing works,  
5 maybe we can get together later and --

6 MR. JONES: Have a drink?

7 CHAIRMAN PERATA: No, make some money.

8 [Laughter.]

9 CHAIRMAN PERATA: Our final two are from the  
10 Department of Rehabilitation: the Director, Anthony Sauer, and  
11 Luciana Profaca, Chief Deputy Inspector.

12 Welcome. I appreciate your forbearance for  
13 taking you out of order.

14 MR. SAUER: Thank you.

15 CHAIRMAN PERATA: Whoever would like to go first  
16 may.

17 MR. SAUER: I think I will go first.

18 I would agree about the weight loss program,  
19 even just anticipating this.

20 [Laughter.]

21 MR. SAUER: It's very stressful.

22 SENATOR BATTIN: So, you're suggesting that  
23 Senator Perata hold you over for two consecutive weeks?

24 [Laughter.]

25 MR. SAUER: No, no. Just the last  
26 week-and-a-half have been enough preparing for this.

27 Good afternoon, Chairman Perata and Committee  
28 Members. I'm proud to be here before you as Governor



1 Schwarzenegger's appointee as Director of the California  
2 Department of Rehabilitation.

3           The Department of Rehabilitation works in  
4 partnership with consumers and stakeholders to provide services  
5 and advocacy resulting in employment, independent living,  
6 equality -- and equality for individuals with disabilities. Our  
7 primary program is the Vocational Rehabilitation Program, of  
8 which I was a consumer nearly 30 years ago.

9           At the age of 18, I was in a motorcycle racing  
10 accident that left me paralyzed. I quickly connected with the  
11 Department of Rehabilitation and received services that enabled  
12 me to become self-employed and self-sufficient. Because of the  
13 Department of Rehabilitation, I was able to enroll in college  
14 quickly, and then move into employment. For that, I'm very  
15 grateful.

16           I feel strongly about assisting other individuals  
17 with disabilities to obtain meaningful employment and gain their  
18 independence so they, too, can live with dignity and in control  
19 of their lives. In fact, this is the driving force of my career  
20 as a public servant to citizens of California.

21           For nearly 20 years, I have served in various  
22 capacities with the primary focus on improving the lives of  
23 people with disabilities in California. In the 1990s, I was  
24 Executive Director of FREED Center for Independent Living. In  
25 2001, I became the Deputy Director of External Affairs at the  
26 Department of Rehabilitation. And then most recently, I was the  
27 Executive Director of the Nevada-Sierra Regional In-Home  
28 Supportive Services Public Authority.

1 I've also been a contributing member to several  
2 work groups and committees, including California's Homestead  
3 Advisory Committee. I was a commissioner on the California  
4 Building Standards Commission, representing people with  
5 disabilities, and for two years as President of the California  
6 Foundation for Independent Living Centers.

7 I hold a Master's Degree in Management and  
8 Disability Services from the University of San Francisco, and  
9 was a fellow in the Sierra Health Foundation Health Leadership  
10 Program, along with Southern California's School of Policy and  
11 Planning Development.

12 I'm honored to be appointed as the Director of  
13 the Department of Rehabilitation and look forward to meeting the  
14 goals that I've set for the Department. These include:  
15 implementing efficiencies to provide counsellors with more time  
16 with their consumers; improving the accountability and success  
17 of the Business Enterprise Program; and securing increased  
18 federal funding for the state's Independent Living Centers.

19 Thank you for your consideration today.

20 CHAIRMAN PERATA: Thank you.

21 MS. PROFACA: Good afternoon, Senators and staff  
22 members. I'm Luciana Profaca, and very proud to be the  
23 appointee of the Governor as Chief Deputy Director of the  
24 Department of Rehabilitation.

25 I have a very personal connection and  
26 understanding of issues of disabilities. My father was a person  
27 with a severe disability, and I saw as a child his many  
28 challenges and his struggles in dealing with his disability,

1 and also as a parent of a child with a disability.

2 When I entered the field of vocational  
3 rehabilitation in 1972 at the age of 22, straight out of  
4 graduate school as a vocational rehabilitation counselor with  
5 the Department of Rehabilitation, I could not have dreamed that  
6 today I'd be sitting before you as the appointee as Chief Deputy  
7 Director of a department that I truly love.

8 I entered this field to empower people with  
9 disabilities to reach their own personal goals and aspirations.  
10 I've served capably and with great pride for 36 years, first as  
11 a counsellor, as a district administrator, as a deputy director,  
12 and now as Chief Deputy Director, and have witnessed the  
13 professional expertise of our staff, as well as the difference  
14 that our department has made in the lives of people with  
15 disabilities.

16 I hold a Master's Degree in Rehabilitation  
17 Counseling, and a Doctorate in Clinical Psychology. I've served  
18 on numerous boards and commissions, including the California  
19 Mental Health Planning Council, San Francisco and San Mateo  
20 County Workforce Investment Boards.

21 I'm very aware of the very lean times and the  
22 budget struggles that California faces, that people with  
23 disabilities face, that the department face. But I feel that  
24 with my leadership and with our wonderful new Director -- he's  
25 visionary -- Tony Sauer, and with an outstanding executive  
26 leadership team, the department is truly blessed with  
27 outstanding leaders and a very, very committed staff, that we  
28 can meet the promise of the Department of Rehabilitation in

1 increasing employment opportunities, independence, and equality  
2 for people with disabilities.

3 Thank you for this opportunity, and we welcome  
4 your questions.

5 CHAIRMAN PERATA: Thank you very much.

6 I'll just start by saying I'm very happy that  
7 both of you are doing what you're doing. I know that oftentimes  
8 it must not be easy.

9 Mr. Sauer, you had said that you were trying to  
10 get less paperwork and more time with clients. How's that  
11 going?

12 MR. SAUER: Actually it's going quite well. The  
13 reason that's such a priority for me is, my counsellor really  
14 helped me by being face-to-face with me 30 years ago.

15 We have -- our electronic recording system is  
16 well on its way to being implemented, which will really  
17 alleviate the counsellors from spending hours in front of the  
18 computer, doing the paperwork. Right now we have a 1990's  
19 Legacy System that's taking hours and hours to do casework. And  
20 we should have that up and running, the plan is, by 2011.

21 We're also looking -- we've actually started a  
22 pilot program to do procurement specialist to purchase goods.  
23 Our counsellors are spending a lot of time purchasing goods,  
24 getting bids, and going through the state process of  
25 purchasing. And at this point, we have two -- two of our  
26 districts have started the process of a procurement specialist,  
27 and if it's successful, five more will be rolled out in the next  
28 couple of months. And all the districts should have a



1 procurement specialist by the end of next year.

2 And then the third phase is looking at a whole  
3 new way of doing business, of having counsellors really work as  
4 a team, and work one-on-one with the consumers as necessary, but  
5 as a team to do a better job. And that's still in the process  
6 of working out, but those first two are well on their way, and  
7 they're happening right now.

8 CHAIRMAN PERATA: Do you have a waiting list  
9 right now?

10 MS. PROFACA: We do have a waiting list. We  
11 entered an order of selection. Every state agency is required,  
12 if they cannot serve every person with a disability, to have a  
13 waiting list. We started that in 1995.

14 At this point, we have 395 people on our waiting  
15 list, so a small number. We serve approximately 120,000 people  
16 in any given year.

17 CHAIRMAN PERATA: Really impressive.

18 What do you think the budget cuts do to you, the  
19 waiting list?

20 MS. PROFACA: The budget cuts don't have an  
21 impact necessarily on the waiting list. The budget cuts have an  
22 impacts on the realities of what we are doing.

23 We're looking at how to continue to provide  
24 services where the budget cuts will have the least impact on  
25 direct services to our consumers. That has been our -- our  
26 major vision and focus as we've looked at how to cut these  
27 necessary cuts.

28 CHAIRMAN PERATA: Given the nature of the



1 disabilities, are you able to have staff out, rather than having  
2 people come in to you?

3 MR. SAUER: I'll start that, and she may want to  
4 fill in.

5 We do both, depending on where the office is. In  
6 some of the urban areas, it's a lot easier for folks to get into  
7 the office because there's adequate transportation. In many of  
8 the rural areas, our staff do go out, and we have collaborative  
9 partnerships with the Workforce Investment Boards and with the  
10 various one-stops.

11 So, it does depend on where the location is. And  
12 then, some counsellors prefer going out, and some prefer people  
13 coming in. I think it just works -- it just depends on the  
14 person as well.

15 CHAIRMAN PERATA: Autism. What is the  
16 department's responsibilities or jurisdiction in autistic  
17 cases?

18 MS. PROFACA: Let me respond to that, especially  
19 since in my career, I used to work in the field of habilitation  
20 services, so I have a lot of first-hand understanding of issues  
21 of people with developmental disabilities, autism being one of  
22 those.

23 And there is just a burgeoning increase in the  
24 number of people with autism spectrum disorders: autism,  
25 Asperger's, and other spectrum disorders.

26 And what the Department of Rehabilitation is  
27 doing right now is developing a training plan so that our  
28 counsellors, as the numbers increase -- we are currently serving

1 people with autistic spectrum disorders, but as the numbers  
2 increase, that all of our counsellors have those skills and  
3 abilities, whether in the field of the behavioral impacts of  
4 autism, the medical impacts, the vocational opportunities that  
5 will be afforded people with autistic disorders. And there's a  
6 wide spectrum of how autism impacts the individual, and taking  
7 that into account as well.

8 CHAIRMAN PERATA: Questions here?

9 We have a number of people who have come to speak  
10 in behalf. We'll start with those in favor.

11 MR. KYSOR: Good afternoon, Chair Perata. Hey,  
12 we're going to miss you.

13 CHAIRMAN PERATA: Thank you.

14 MR. KYSOR: And my guide dogs will miss you  
15 getting dog hair all over your clothes.

16 [Laughter.]

17 CHAIRMAN PERATA: I'm the Governmental Affairs  
18 Director for the California Council of the Blind.

19 And I've met a succession of and been in this  
20 very Committee opposing some directors years ago.

21 I'm sorry. I'm Dan Kysor with the California  
22 Council of the Blind.

23 CHAIRMAN PERATA: And the dog's name.

24 [Laughter.]

25 MR. KYSOR: Pilly.

26 And I just wanted to say that -- that this  
27 director has shown a capacity to work with consumers, and he has  
28 addressed the issues with the Business Enterprise Program, and

1 we hope that he continues to work on that program.

2 And especially we urge him to also work on the  
3 Orientation Center for the blind issues that are still remaining  
4 that the department seems to place -- traditionally has placed  
5 as a low priority. But we know Tony is going to work on that.

6 So, thank you very much.

7 CHAIRMAN PERATA: Thank you.

8 MR. KYSOR: We're supporting Luciana also.

9 MS. McPARTLAND: Hi. I'm Pat McPartland with the  
10 California Association of State Employees with Disabilities.

11 We're very proud to support Tony for Director and  
12 Luciana for Chief Deputy Director of the Department of  
13 Rehabilitation.

14 They've been very supportive of state employees  
15 with disabilities. And one particular example I wanted to  
16 mention is, the Governor's Executive Order to make the state a  
17 model employer of persons with disabilities, they've been --  
18 both Tony and Luciana have been very supportive of that in  
19 working with the State Personnel Board on getting that  
20 implemented.

21 So, we're just very pleased to support them both.  
22 Thank you.

23 CHAIRMAN PERATA: Thank you.

24 Please kneel.

25 [Laughter.]

26 MR. HATCH: If you don't mind, this is more  
27 comfortable.

28 My name is Michael Hatch. I'm the Chairperson of

1 the California Vendors Policy Committee, which is by statute  
2 mandated to represent all the blind vendors who are part of the  
3 Business Enterprises Program in California, which is obviously  
4 under the Department of Rehabilitation.

5 The statute also mandates that we actively  
6 participate with all major policy decisions that effect our  
7 program.

8 As the Chairperson, I've had the opportunity to  
9 meet, work with both Luciana and Tony since they came on board.  
10 I've found them to be extremely accessible, way more accessible  
11 than I had originally thought. And they do seem to be quite  
12 committed to the improvement of the Business Enterprises  
13 Program.

14 I did want to make the comment that the Business  
15 Enterprise Program right is in a -- in a whole bunch of  
16 trouble. There was a 2001-2002 BOSA report that, although it  
17 cited a lot of deficiencies in the management of our program,  
18 cited that at that point, the program in its trust fund, which  
19 is used to take care of the day-to-day operations of the  
20 program, had an excess of over \$2 million.

21 Today, about six or seven years later, our  
22 program -- our fund is practically bankrupt. We don't have  
23 enough money to get through the end of the fiscal year each year  
24 to do simple repairs on the equipment in our different  
25 locations, and we have very little money to do any further  
26 development of locations.

27 The department's own audit, released at the end  
28 of 2007, stated major deficiencies in the management of the



1 Business Enterprises Program. In fact, Chapter One was, I  
2 believe, entitled: "Poor Management Practices Jeopardize the  
3 Stability of the Business Enterprises Program."

4 These very issues brought up in the audit were  
5 brought up by CVPC at least two to three years before the audit  
6 was ever released. Unfortunately, our cries for help went  
7 unheeded.

8 I do believe that both the Director and the Chief  
9 Deputy Director are committed to fix these problems, but I'm  
10 here today just to state that these problems are still here  
11 today, and asking for their commitment to -- from their position  
12 above to help direct the management team of BEP to do obviously  
13 a far better job than they've been doing before.

14 That's all I really wanted to comment on today.  
15 We're not here to oppose. We're just here to say we need help.

16 CHAIRMAN PERATA: On bended knee he's saying  
17 this.

18 [Laughter.]

19 MR. HATCH: Thank you.

20 CHAIRMAN PERATA: Thank you.

21 MS. PAZDRAL: You see, I don't have to kneel.  
22 This is perfect for me.

23 [Laughter.]

24 MS. PAZDRAL: So, my name is Elizabeth Pazdral,  
25 and I'm the Director of the State Independent Living Council,  
26 which is council of Governor appointees that advises the  
27 Governor and the Legislature about the allocation of federal  
28 independent living funds, and also sort of keeps track of what



1 the different unmet needs are in the state.

2 And I think California maintains its commitment  
3 to people with significant disabilities when it appoints members  
4 of our community, people who are familiar and knowledgeable  
5 about what our needs are from their own experience, as people  
6 who are in charge of these services.

7 I have had really good experiences both with  
8 Director Sauer and with Deputy Director Profaca on some  
9 controversial issues. But what I've learned is that there's  
10 nothing that we can't talk about and that we can't come to some  
11 agreement on. That's very encouraging and very exciting.

12 They've also demonstrated their commitment to  
13 community partnership and collaboration. Director Sauer has  
14 attended all of our quarterly meetings. Deputy Director Profaca  
15 has made a point of including us in some important decision  
16 making, like hiring processes in the independent living unit.

17 And so, I feel very confident that we're going to  
18 continue to have a really good collaboration between the State  
19 Independent Living Council and the Department of Rehabilitation  
20 with this leadership in place.

21 So, I want to thank you for making this possible,  
22 and I hope that you will approve these. Thank you.

23 CHAIRMAN PERATA: Thank you.

24 MR. DOWLING: My name is Michael Dowling. I'm  
25 here to represent the Randolph-Sheppard Vendors of California,  
26 part of the Randolph-Sheppard Vendors of America.

27 We do accept, yes, approve of these two being  
28 nominated.

1                   We would like to say, though, that the report  
2                   that Mr. Hatch was referring to, all of those problems have come  
3                   about in the last three years with the new Deputy Director of  
4                   Blind Field Services.

5                   And so, we would ask -- we'd like to ask that  
6                   this panel direct Tony here to take some action to correct the  
7                   problems. I personally had a two-hour talk with this gentleman  
8                   two years ago. For two hours, with an attorney from the  
9                   Department of Rehabilitation who continuously told the Deputy  
10                  Director of Blind Field Services that I was correct in saying  
11                  that it was criminal negligence not to uphold the Welfare and  
12                  Institution Codes, and not to uphold the Randolph-Sheppard Act.

13                  Mr. Sauer has unfortunately inherited this  
14                  problem, and he has shown that he is very willing to hear us,  
15                  but we need action.

16                  The second thing -- I'm trying to remember what  
17                  was in the letter -- the second thing is to ask that we work  
18                  together to try to do like other states in possibly using a  
19                  nominee agency to actually properly control the Business  
20                  Enterprise Program as a business enterprise program and not as a  
21                  welfare program.

22                  CHAIRMAN PERATA: Thank you.

23                  MR. DOWLING: Thank you.

24                  CHAIRMAN PERATA: I saw Mr. Sauer nodding in the  
25                  affirmative. I guess you are familiar with the situation?

26                  MR. SAUER: Oh, yes.

27                  CHAIRMAN PERATA: If you need some help, give us  
28                  a call.

1 MR. KEHOE: Good afternoon, Mr. Chairman. I'm  
2 John Kehoe, and I'm the Chairman of the California  
3 Rehabilitation Appeals Board. There's seven members of the  
4 board appointed by the Governor, confirmed by all of you on the  
5 Senate Rules Committee, and we serve the spirit of the  
6 Department of Rehabilitation as the court of last appeal for  
7 cases that cannot be resolved within the department procedures.

8 I'm here today to unanimously -- all seven have  
9 signed this statement -- to endorse the Deadly Duo.

10 [Laughter.]

11 MR. KEHOE: I know that that analogy might not be  
12 appropriate because this doesn't look like Batman, and certainly  
13 Luciana doesn't look like Robin.

14 But I can predict that on behalf of the state,  
15 they will be the Deadly Duo with respect to maintaining the  
16 mission of the department.

17 And I do want to acknowledge that two of my board  
18 members are here with me. One is Peter Mendoza, who's seated  
19 over there.

20 CHAIRMAN PERATA: Welcome.

21 MR. KEHOE: And Peter's from your district. When  
22 he gets into a problem on a vote, he reminds us of who his  
23 Senator is.

24 CHAIRMAN PERATA: Thank you, Peter.

25 [Laughter.]

26 MR. KEHOE: He will have you to work with for the  
27 rest of the year; right?

28 CHAIRMAN PERATA: Yes, and I'll give you the name

1 of the next person.

2 [Laughter.]

3 MR. KEHOE: Bonita Sanchez Jackson is the other  
4 member who's with me.

5 But the others join me in a statement, which I  
6 will leave for the record, and we urge a unanimous endorsement  
7 of the Deadly Duo.

8 CHAIRMAN PERATA: Thank you, Mr. Kehoe.

9 Anyone further? Yes.

10 MS. GUERRA: Good afternoon. My name is Ann  
11 Guerra. I'm here representing the Nevada-Sierra Regional IHSS  
12 Public Authority and FREED Center for Independent Living, the  
13 two consumer-controlled organizations in Nevada County, which is  
14 where Tony hails from.

15 We know Tony to be a tireless advocate for equal  
16 rights for people with disabilities and equal opportunity. And  
17 we know him as an employer first locally, and now as the  
18 Director of the Department of Rehabilitation as a person who  
19 fully understands that employment for people with disabilities  
20 is as necessary, achievable, essential and reasonable as it is  
21 for all other Californians.

22 Personally, I also want to endorse Luciana  
23 Profaca, having had opportunities to work with her, and knowing  
24 that she's fully committed to the goals she and Tony have  
25 articulated today.

26 CHAIRMAN PERATA: Thank you.

27 MR. OMOTO: Marty Omoto, California Disability  
28 Community Action Network.



1 This is a picture of my sister who had  
2 development disabilities. She passed away a couple of years  
3 ago.

4 People like Tony and Luciana mean a lot to  
5 families because their work is extraordinary, and the commitment  
6 of these two people here has been remarkable. It means a lot.  
7 And a lot of families may not know these two individuals as I  
8 do. I've worked with Luciana on stakeholder meetings, and Tony  
9 on the Olmstead Committee and other committees and other work.

10 I know their commitment. They're good and decent  
11 people. Their work over the years has made a great deal of  
12 difference to families like mine over the years.

13 So, strongly endorse their appointment.

14 And also, I just want to say, to make their work  
15 easier, and also to make the work of the Department of Rehab as  
16 effective as it has been, is to reject the Governor's cuts, the  
17 10 percent cuts that would result in the closure of field  
18 offices, permanent closure of field offices.

19 Thank you.

20 CHAIRMAN PERATA: Thank you.

21 MR. BENSON: I'm Robert Benson. I'm with the  
22 California Disability Community Action Network.

23 Briefly, I wanted to say me and CDCAN support  
24 these two.

25 Thank you.

26 CHAIRMAN PERATA: Thank you.

27 MR. PASCOVER: I don't know whether to stand or  
28 kneel.



1 I'm Doug Pascover. I'm the Director of Arriba,  
2 the independent living services program. We serve adults with  
3 developmental disabilities between East Los Angeles and Yucaipa.

4 I'm here to support both appointments.

5 CHAIRMAN PERATA: Thank you. You came a long way.

6 MS. FAVUZZI: Good afternoon. My name is Teresa  
7 Favuzzi. I'm the Executive Director of the California  
8 Foundation for Independent Living Centers. I represent the  
9 interests of 25 independent living centers across California,  
10 who serve over 350,000 people with disabilities each year.

11 We enthusiastically support the confirmation of  
12 both these individuals who have devoted a remarkable -- their  
13 remarkable careers to advancing the lives of people with  
14 disabilities in the state of California. You couldn't get a  
15 better duo than these two.

16 Short, sweet: We're very not only excited about  
17 what Tony and Luciana bring to the department, but we're excited  
18 to have the opportunity to advance the department as we go into  
19 the future.

20 CHAIRMAN PERATA: Thank you.

21 MS. CALAME: It doesn't sound like you need too  
22 much more positive affirmation of these two, but I'm pleased to  
23 speak in strong support of Tony Sauer's confirmation.

24 My name's Donna Calame.

25 To give you a sense of who I am and where of I  
26 speak, I've worked on health care reform, long-term care, and  
27 the IHSS program improvements for over two decades. I've been  
28 Executive Director of the San Francisco IHSS Public Authority

1 from its inception in 1995. I became the first President of the  
2 newly formed then CAPA for IHSS, California Association of  
3 Public Authorities, in 2003.

4 And that's where I met Tony, although his  
5 positive reputation had preceded him before I actually met him.  
6 But we worked together for a number of years on CAPA. Through  
7 the course of that work, I found him to be an excellent  
8 listener, intelligent in his reading of situations, focused on  
9 big goals and vision, passionate in his view to allow people  
10 with disabilities the most independent lives possible. Firm,  
11 articulate, and diplomatic in expressing his views.

12 Tony makes -- would make an excellent Director of  
13 the Department of Rehab because of those qualities. And in my  
14 experience, I've never heard a word other than high regard for  
15 him from my colleagues and other people in the state.

16 As you heard from Tony and others, he really has  
17 lived this. In my role as a regular citizen, it's really  
18 heartening to see someone rise to this position because of his  
19 leadership qualities and skills.

20 I consider him to be an integrated person in the  
21 sense that he consistently lives out his values, and we need  
22 people like him in government to express his point of view, no  
23 matter how it may be received or implemented or not.

24 And I strongly urge you to confirm his voice and  
25 Luciana's. I haven't had the pleasure of working with her, but  
26 it sounds like a great duo in the department, and we need this  
27 voice for people with disabilities to gain as much independence  
28 as possible.

1                   It seems like we deny them possibilities for  
2 employment. We make them poor. We make many of them rely on  
3 IHSS, and then we jerk them around.

4                   CHAIRMAN PERATA: Well said, thank you.

5                   Okay, anybody here who wants to come up and say  
6 something bad?

7                   [Laughter.]

8                   CHAIRMAN PERATA: Do either of you have any  
9 family here that you'd like to introduce?

10                  MR. SAUER: Yes. I have my daughter Stephanie,  
11 and then my fiancée Kathryn Compson.

12                  CHAIRMAN PERATA: Welcome.

13                  MS. PROFACA: My family's out of the area.

14                  CHAIRMAN PERATA: I don't know that anything more  
15 needs to be said, other than thank you.

16                  I don't know the last time I've heard that many  
17 people directly affected by an agency come up and praise. So  
18 many people.

19                  So, congratulations.

20                  Do we have motion to approve?

21                  SENATOR BATTIN: Move it.

22                  CHAIRMAN PERATA: Call the roll, please.

23                  SECRETARY WEBB: Cedillo.

24                  SENATOR CEDILLO: Aye.

25                  SECRETARY WEBB: Cedillo Aye. Dutton.

26                  SENATOR DUTTON: Aye.

27                  SECRETARY WEBB: Dutton Aye. Padilla.

28                  SENATOR PADILLA: Aye.

1 SECRETARY WEBB: Padilla Aye. Battin.

2 SENATOR BATTIN: Aye.

3 SECRETARY WEBB: Battin Aye. Perata.

4 CHAIRMAN PERATA: Aye.

5 SECRETARY WEBB: Perata Aye. Five to zero.

6 CHAIRMAN PERATA: Go out and have a big milk  
7 shake.

8 [Laughter.]

9 MR. SAUER: Thank you.

10 [Thereupon this portion of the  
11 Senate Rules Committee hearing  
12 was terminated at approximately  
13 3:32 P.M.]

14 --ooOoo--  
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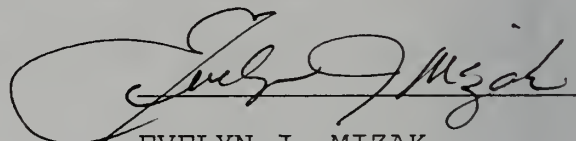
CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 23<sup>rd</sup> day of May, 2008.



EVELYN J. MIZAK  
Shorthand Reporter



## APPENDIX



**Kathleen Brugger**

May 5, 2008

Senate Rules Committee  
California State Senate  
State Capitol, Room 420  
Sacramento, CA 95418

Dear Chairman Perata and  
Senators Ashburn, Cedillo, Dutton and Padilla:

Thank you for the opportunity in responding to your questions of April 17, 2008.

### **Roles and Responsibilities**

The California State Teachers' Retirement System (CalSTRS) is the largest teachers' retirement system in the United States, with approximately 813,000 members and beneficiaries and assets of \$171 billion. It covers teachers in public K-12 schools and community colleges. The primary responsibilities of CalSTRS include maintaining a fiscally sound plan for funding approved benefits, providing authorized benefits to members and beneficiaries in a timely manner, and furnishing pertinent information to teachers, school districts, and other interested groups. The board has overall management responsibility for CalSTRS and the authority to review applications for CalSTRS benefits.

1. *What have been your most significant accomplishments during your first term on the State Teachers' Retirement Board? What do you hope to accomplish during your current tenure? How will you measure your success? Please be specific.*  
*Retaining excellent leadership in CalSTRS CEO Jack Ehnes and CIO Christopher Aleman brings forth a positive atmosphere for the organization.*  
*Revising CalSTRS Board Policy 600 h. in bringing transparency to potential investors.*  
*During my current term I hope to continue the excellent leadership of CalSTRS' staff. Continue looking worldwide for opportunities that enhances our portfolio.*  
*Always keeping in mind our fiduciary responsibilities as a board member.*  
*Measuring success is growing the CalSTRS funds that will reflect the advice brought forth from our CEO and CIO*
2. *What do you believe is the most important responsibility of a board member?*

**Senate Rules Committee**

MAY 13 2008

**Appointments**

*The California Constitution says'... The members of the retirement board of a public pension or retirement system shall discharge their duties with respect to the system solely in the interest of, and for the exclusive purposes providing benefits to participants and their beneficiaries minimizing employer contributions thereto, and defraying reasonable expenses of administering the system. A retirement board's duty to its participants and their beneficiaries shall take precedence over any other duty..."*

3. *What training and assistance do you receive from staff or others to assist you in deliberating often complex CalSTRS' issues?*

*Complex issues are brought forth for a first and second reading with time to ask for further information. Workshops are held by staff and experts explaining the topic under discussion. Staff is available for one on one communication.*

### **CalSTRS and the State Budget**

The state is facing a budget crisis, with a projected multibillion dollar deficit. The Governor has put forward a budget proposal that will distribute this deficit equally to all areas of the budget, including education. As you know, the Governor has also put forward a budget proposal for CalSTRS that affects the Supplemental Benefit Maintenance Account (SBMA). The proposal would simultaneously (a) reduce the state's contribution to SBMA, (b) vest this benefit at 80 percent of purchasing power for CalSTRS' members, and (c) allow the board to increase future state contributions if more funding were needed to meet the obligation to retirees. At the same time, the board has put forward a proposal that is similar to the Governor's proposal, but vests the purchasing-power benefit at a higher level (82.5 percent) than the Governor's proposal.

4. *When making a decision as a board member, how do you balance your fiduciary responsibility to CalSTRS' beneficiaries with the budgetary needs of the state, especially given the important role that the state plays in funding both the state's public K-12 system and the CalSTRS pension system?*

*The CalSTRS Board has its first duty to our members and beneficiaries. The state budget is finalized by the state legislature. They have the final word on what is presented to the Governor for his signature.*

5. *In its analysis of the 2008-09 Budget Bill, the Legislative Analyst's Office raises various concerns about the Governor's proposal regarding SBMA, one of which is the risk that the state's contribution rate to SBMA would have to increase in future years. What is your opinion regarding the Vesting portion of the Governor's proposal and the benefits it gives to retirees versus the long-term liability it leaves for the state?*

*Reducing the state's contribution to the Supplemental Benefit Maintenance Account would be a problem for CalSTRS. From the language bringing brought*



*forth there is no guaranteed back fill if more funding were needed to meet the obligations of the retirees.*

## **Unfunded Liability**

The most recent CalSTRS actuarial valuation found the system's unfunded liability to be approximately \$19.6 billion, leaving the system 87 percent funded. The size of the unfunded liability decreased relative to the previous year's valuation. While this unfunded liability is comparable to that of big pension systems in other states, it is still substantial.

6. *Based on the information you have, what do you believe is the best option for addressing the unfunded liability? How did you reach your conclusion? September, 2006 the CalSTRS Board addressed the Unfunded Obligation. Stating the intent of the Board: maintain the current level of benefits, increase the member contributions in the amount recommended by staff, increase the employer contributions in the amounts recommended by staff, increase the state's contribution, protect the 2% annual benefit adjustment statutorily, require employers to make contribution for post – retirement employment of members and that incorporates the concept of contributions for health care.*

*This conclusion for the Unfunded Obligation was reached after much input from contingency groups and staff.*

7. *When considering options to address the unfunded liability, how do you balance the following considerations: the current volatility in the financial markets, the state's fiscal situation, and your obligation to CalSTRS' members? The Board is first obligated to the CalSTRS' members and beneficiaries.*

## **Retiree Health Benefits**

Currently, individual school districts make decisions about whether to fund the health benefits of their retired teachers. According to the Legislative Analyst's Office, 60 percent of school districts report providing some amount of health benefits to retirees, with some of these districts reporting substantial unfunded liabilities. As you know, the CalSTRS' board recently considered a proposal to redirect a portion of future state contributions that otherwise would be credited to SBMA to fund a health care benefit to retired members.

8. *The Governor's Post-Employment Benefits Commission recommended that local governments in California (including school districts) pre-fund all retiree health benefits. What are your views of this recommendation given the difficult budget situation? How might school districts go about implementing such a recommendation?*

*The Governor's Post Employment Benefits Commission recommendation that local governments pre-fund all health retiree benefits is addressed by GASB 45. The intent behind GASB 45 (Post-Employment Retirement Benefits) is to require all governmental entities to develop and implement a plan under which they identify the amount of their unfunded liabilities then establish an oversight board who are responsible to insure that the unfunded liability is fully funded in 30 years (while continuing to fund the current year liability for retiree benefits). Since GASB 45 does not require a contribution to pre-funding every year, it provides flexibility to local agencies to forgo pre-funding during years when the state budget is difficult and set aside additional pre-funding when the state budget is better. In conclusion, the Governor's Commission should support local agencies meeting their post employment retirement benefits under the GASB 45 requirements.*

9. *The board recently proposed redirecting a portion of future state contributions to SBMA and instead using these for health care benefits for retired members. How does this proposal fit into the overall retiree health issue? Due to my Chemo therapy treatments I was unable to be in attendance for the discussion. However, it is my understanding no action has been taken by the Board to redirect SBMA for health care benefits. This proposal was brought forth by a Task Force checking into the impact of health care costs on retirees.*

## **Corporate Governance and Investment Performance**

In recent years, large public employee pension funds have positioned themselves to exert influence on the corporations in which they invest.

10. *What are your views on the board's corporate governance policy and its relationship to the board's fiduciary responsibility to its members? CalSTRS and our CEO Jack Ehnes has been proactive to address our fiduciary responsibilities. CalSTRS seeks support from shareholders when a company needs to address issues for our board's responsibility to its members.*

*When the stock market experiences a major decline, the value of many investments is reduced. Although public pension fund portfolios are indexed and diversified, at times major declines in the stock market have resulted in significant losses for public pension funds.*

11. *What long-range and preventive measures should public pension funds, such as CalSTRS, implement to reduce or mitigate the risk of catastrophic losses in the stock market? CaSTRS CEO Jack Ehnes stated, "...CalSTRS broad portfolio diversification into long-term investments, investments in global real estate and*

*alternative investments (private equity) have out performed the U.S. and global stock markets."*

## **Actuarial Analyses**

The board has the ability to ask for actuarial analyses of CalSTRS' assets and various proposals that would affect its liabilities. To perform its analyses, the actuary must make certain assumptions about future economic factors. For example, in evaluation the latest proposal to reduce the state's contribution for SBMA, the actuary assumed that inflation would average 3.25 percent annually over the next 30 years.

12. *What responsibility do you believe you have as a board member to assess whether the actuary's assumptions represent both the worst- and best-case scenarios? How do you intent to carry out this responsibility?*  
*A board member has a fiduciary responsibility to our members and beneficiaries to review the assumptions and make sure they are realistic.*  
*During discussions of the actuary's presentations one can ask questions of the presenter. Inquiries can be made of staff as to worst-and-best-case scenarios in application of the board member's fiduciary responsibilities*
  
13. *The Governor's Post-Employment Benefits Commission recommended that the state create a California actuarial advisory panel to advise retirement systems. What is your opinion of this recommendation?*  
*Having an opinion on the creation of a California actuarial advisory panel depends on the panel's role and responsibilities to the retirement systems.*  
*The benefit to the retirement systems over and above what is currently in place would be a factor in determining the need for the California actuarial advisory panel.*



*Elizabeth D. Rogers*

## **Roles and Responsibilities**

The California State Teachers' Retirement System (CalSTRS) is the largest teachers' retirement system in the United States, with approximately 813,000 members and beneficiaries and assets of \$171 billion. It covers teachers in public K-12 schools and community colleges. The primary responsibilities of CalSTRS include maintaining a fiscally sound plan for funding approved benefits, providing authorized benefits to members and beneficiaries in a timely manner, and furnishing pertinent information to teachers, school districts, and other interested groups. The board has overall management responsibility for CalSTRS and the authority to review applications for CalSTRS benefits.

1. *What have been your most significant accomplishments during your first term on the State Teachers' Retirement Board? What do you hope to accomplish during your current tenure? How will you measure your success? Please be specific.*

*I believe I have always kept the integrity and objectives of providing a safe retirement for teachers as the guiding principle of my activities and votes*

*I feel that my most significant accomplishment has come through my role as chairman of the audit committee. We have focused on the need for a strong audit function in general and especially in a time when so many of the checks and balances of Wall Street have failed investors. The Board has striven to adopt the same requirements that CalSTRS sought to be imposed on publicly traded corporations in Sarbanes Oxley. We have hired a financial expert to serve on the committee. We have established a more in depth audit of the investments. We have helped spearhead an effort to revamp the data systems to give us better information and stronger controls. I look forward to pursuing these projects as well as working on one of the key challenges, which is an integrated and accurate system of data input from the various school districts. Modern technology allows for ever better understanding of risk points in the organization and the development of the Future State Architecture for CalSTRS will be significant.*

*I am very proud to have been a colleague with other board members in various decisions. CalSTRS has been a leader in issues of corporate governance including executive compensation, shareholder voting and diversity on boards. I would like to see an increase in diversity on corporate boards during the remainder of my tenure. We have been precedent setting in our limiting of political contributions. I would like to see CalSTRS continue to be a trend setter in standards of political ethics*

*Elizabeth D. Rogers*

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*Elizabeth D. Rogers*



2. *What do you believe is the most important responsibility of a board member?*

*The most important responsibility of the Board is to insure a safe retirement for the teachers who are members*

3. *Since you are appointed to a "public member" seat, what do you believe your responsibilities are to the public in general?*

*In the role of trustee of CalSTRS there is a very clearly defined role as a fiduciary to always put the teachers retirement first and that is extremely narrowly defined. In my own mind the public duty is to make sure that teacher retirements are guaranteed which will guarantee a strong public education system that will serve the democracy's need for well educated citizens.*

4. *What training and assistance do you receive from staff or others to assist you in deliberating often complex CalSTRS' issues?*

*CalSTRS has an excellent professional staff which trains us in the various issue areas. Ed Derman dedicates himself along with the benefits team to making sure we follow the complexities of the actuarial issues, benefit structure, and legislative issues facing us. Chris Ailman does an excellent job on investments. Jack Ehnes not only helps us with our immediate issues but gives us guidance on best practices and other issues from funds and legislatures around the country and in Washington. Besides the staff briefings, we have regular training sessions in specific issues, expert panels and the opportunity to attend offsite training. Training is a continuing part of our responsibility as trustees.*

## **CalSTRS and the State Budget**

The state is facing a budget crisis, with a projected multibillion dollar deficit. The Governor has put forward a budget proposal that will distribute this deficit equally to all areas of the budget, including education. As you know, the Governor has also put forward a budget proposal for CalSTRS that affects the Supplemental Benefit Maintenance Account (SBMA). The proposal would simultaneously (a) reduce the state's contribution to SBMA, (b) vest this benefit at 80 percent of purchasing power for CalSTRS' members, and (c) allow the board to increase future state contributions if more funding were needed to meet the obligation to retirees. At the same time, the board has put forward a proposal that is similar to the Governor's proposal, but vests the purchasing-power benefit at a higher level (82.5 percent) than the Governor's proposal.

5. *When making a decision as a board member, how do you balance your fiduciary responsibility to CalSTRS' beneficiaries with the budgetary needs of the state, especially given the important role that the state plays in funding both the state's public K-12 system and the CalSTRS pension system?*

*The fiduciary obligation of a CalSTRS board member is very clear. We are here to advocate on behalf of the members of the teachers retirement plan. We must, as part of our obligation, focus solely on the benefit for the teachers. The budget balancing must be the concern of the legislature and the Governor and our board must advocate for teachers.*

6. *In its analysis of the 2008-09 Budget Bill, the Legislative Analyst's Office raises various concerns about the Governor's proposal regarding SBMA, one of which is the risk that the state's contribution rate to SBMA would have to increase in future years. What is your opinion regarding the Vesting portion of the Governor's proposal and the benefits it gives to retirees versus the long-term liability it leaves for the state?*

*The fiduciary obligation of a CalSTRS board member is very clear. We are here to advocate for the members of the teachers retirement plan. We must, as part of our obligation, focus solely on the benefit for the teachers. The budget balancing must be the concern of the legislature and the Governor and our board must advocate for teachers.*

### **Unfunded Liability**

The most recent CalSTRS actuarial valuation found the system's unfunded liability to be approximately \$19.6 billion, leaving the system 87 percent funded. The size of the unfunded liability decreased relative to the previous year's valuation. While this unfunded liability is comparable to that of big pension systems in other states, it is still substantial.

7. *Based on the information you have, what do you believe is the best option for addressing the unfunded liability? How did you reach your conclusion?*

*In considering the choices for achieving 100% funding which it is our fiduciary responsibility to pursue, we must look to each of the stakeholders, the teachers, the school boards and the state as participants in the process. There is no simple conclusion but an ongoing dialogue that has to be dealt with as a continuous process.*

8. *When considering options to address the unfunded liability, how do you balance the following considerations: the current volatility in the financial markets, the state's fiscal situation, and your obligation to CalSTRS' members?*

*Our fiduciary obligation to our members is our responsibility. Budgets are always tight and financial markets are always volatile, our responsibility is to advocate for a fully funded pension fund for our members.*

## **Retiree Health Benefits**

Currently, individual school districts make decisions about whether to fund the health benefits of their retired teachers. According to the Legislative Analyst's Office, 60 percent of school districts report providing some amount of health benefits to retirees, with some of these districts reporting substantial unfunded liabilities. As you know, the CalSTRS' board recently considered a proposal to redirect a portion of future state contributions that otherwise would be credited to SBMA to fund a health care benefit to retired members.

9. *The Governor's Post-Employment Benefits Commission recommended that local governments in California (including school districts) pre-fund all retiree health benefits. What are your views of this recommendation given the difficult budget situation? How might school districts go about implementing such a recommendation?*

*This is an issue that is currently under study by the Board. Since CalSTRS does not currently fund health care, it is premature for me to have formed an opinion without more discussion and research. This is an ongoing dialogue and as a colleague I would look forward to working out a consensus with much more research and dialogue.*

10. *The board recently proposed redirecting a portion of future state contributions to SBMA and instead using these for health care benefits for retired members. How does this proposal fit into the overall retiree health issue?*

*To clarify, the board has not proposed redirecting future state contributions to be used for retiree health care; this is a recommendation being made to the Board by a Task Force established to evaluate how CalSTRS can help address retiree health care issues. Since CalSTRS does not currently fund health care, it is premature for me to have formed an opinion without more discussion and research concerning the task force recommendation. This is an ongoing dialogue and as a colleague I would look forward to working out a consensus with much more research and dialogue. The health care environment is so volatile that the picture is always changing*

## **Corporate Governance and Investment Performance**

In recent years, large public employee pension funds have positioned themselves to exert influence on the corporations in which they invest.

11. *What are your views on the board's corporate governance policy and its relationship to the board's fiduciary responsibility to its members?*



*The Board is looking at a very long time horizon, actually in the real world it is infinite since we have new generations of teachers each year, it is in the interest of the teachers to have long term stable investments. Poorly governed corporations are poor investments and well governed ones are good investments. Recent failures of corporate governance in terms of the honesty of operations, efficiency, short term focus of management incentive packages suggests that the corporations can be better governed if there is an increase in accountability to shareholders and consequently changes in corporate governance. CalSTRS should be an active advocate of best corporate governance practices.*

When the stock market experiences a major decline, the value of many investments is reduced. Although public pension fund portfolios are indexed and diversified, at times major declines in the stock market have resulted in significant losses for public pension funds.

12. *What long-range and preventive measures should public pension funds, such as CalSTRS, implement to reduce or mitigate the risk of catastrophic losses in the stock market?*

*The only protection is to take a long term view and diversify risk. Markets fluctuate and one builds in an average rate of return to reflect the long run and also attempts to diversify across as broad a range of products as one can find within the appropriate risk parameters.*

## **Actuarial Analyses**

The board has the ability to ask for actuarial analyses of CalSTRS' assets and various proposals that would affect its liabilities. To perform its analyses, the actuary must make certain assumptions about future economic factors. For example, in evaluation the latest proposal to reduce the state's contribution for SBMA, the actuary assumed that inflation would average 3.25 percent annually over the next 30 years.

13. *What responsibility do you believe you have as a board member to assess whether the actuary's assumptions represent both the worst- and best-case scenarios? How do you intent to carry out this responsibility?*

*This past month, the board reviewed in depth the assumptions on longevity, rate of return, number of members and the other inputs into the actuarial model. This review was done with internal staff and outside consultants so that we have a number of opinions from professionals whose job is to look at other funds practices, historical processes, current trends and come up with their best judgments for our review. We have had training sessions in which different professionals debate different assumptions so that we are informed as to different ways of approaching the problems and we then make a decision.*



14. *The Governor's Post-Employment Benefits Commission recommended that the state create a California actuarial advisory panel to advise retirement systems. What is your opinion of this recommendation?*

*CalSTRS staff has been evaluating the legislation that would implement this portion of the commission report, and will be presenting its analysis at the June meeting. Although the existence of an actuarial advisory panel may be very helpful to smaller retirement systems, given the resources available to CalSTRS and CalPERS, it is not likely that either of those two systems would avail themselves of the advisory panel's services.*



State of California  
Health and Human Services Agency

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The Honorable Senator Don Perata  
Chairman, Senate Rules Committee  
State Capitol, Room 420  
Sacramento, California 95814-4900

April 28, 2008

Dear Senator Perata:

I am pleased to present you and the other members of the Senate Rules Committee the responses to your questions and my statement of goals for the California Department of Rehabilitation (DOR). As you know, the Department faces significant challenges, especially today with the current State budget. As we work through these challenges, I believe we still have unique opportunities to better serve persons with disabilities in their pursuit of economic self-sufficiency and toward their goals of independent living. The potential to make a positive impact on the lives of persons with disabilities is what motivated me to seek this position and what keeps me focused on achieving my goals on a daily basis.

As a person who has lived with a disability since the age of 18, I know what it is like to desire to contribute to society and be economically self-sufficient and yet be faced with significant barriers to this outcome. I have succeeded thanks to my family, DOR Counselor and the many people who encouraged me and believed in my potential.

Nearly 30 years ago, my DOR Counselor took the time to find my passions and, beyond that, to get me involved with local disability awareness and advocacy. Those early efforts helped me believe in myself while paving the way for a more accessible and integrated community.

### **Role of the Department**

The DOR provides vocational rehabilitation services to persons with disabilities. The purpose of the Vocational Rehabilitation program is to place disabled individuals in suitable employment or to provide short-term, intensive vocational rehabilitation for those with developmental disabilities through supported employment and work activity programs. The DOR's mission is to work in partnership with consumers and other stakeholders to provide services and advocacy resulting in employment, independent living, and equality for individuals with disabilities.

The DOR has approximately 1,863 positions and a \$385 million budget, of which only \$56 million is General Fund. The largest program is the Vocational Rehabilitation program, the funding for which constitutes 95 percent of the DOR's total budget. The Vocational

Rehabilitation program is a federal program, and the federal government pays for 85 percent of its costs. The DOR also administers the Independent Living Services program, whereby the Department funds, administers, and supports 29 nonprofit independent living centers throughout California. Lastly, the DOR also serves blind and deaf-blind persons through counselor-teacher services, the purchase of reader services, and community-based projects to serve the elderly blind.

## **Goals**

- 1. Please provide us with a brief statement of your goals. What do you hope to accomplish during your tenure as director of DOR? How will you accomplish these goals and measure your success?***

## **Response:**

I have many goals for the DOR and California, but most importantly I want to implement a positive change in the expectations we have of persons with disabilities. Persons with disabilities are valuable members of society. They can and should contribute to society, and live with dignity and have control over their lives. It is no longer acceptable that persons with disabilities should be merely content with what is given them. Rather, I want to encourage a new belief that as citizens of this remarkable State, they both contribute and partake as equals.

In the DOR's 2008 State Plan, five program goals, three supported employment goals, and one innovation and expansion goal are identified with clearly delineated benchmarks.

When I applied for this position, I shared my desire to see the DOR's skilled counselors have more direct contact with consumers. With an existing legacy case recording system and a cumbersome procurement process, counselors find themselves spending far too much time at their computers and on the telephone with vendors, instead of doing the vocational counseling needed to assist our consumers in reaching their goals. The DOR is currently thoroughly analyzing our current service delivery model to maximize efficiencies and minimize time counselors spend on case management activities. The DOR is well on its way to acquiring a new, off-the-shelf Electronic Records System that will be operational by 2011, and has already begun piloting a new procurement project in two of the Department's 14 districts. The pilot has successfully demonstrated that having a Procurement Specialist in a district can dramatically reduce counselors' time obtaining the goods and services needed to assist our consumers. Five more districts are slated to begin the new procurement system by October 2008, and final statewide roll-out is expected in 2009.

The Department's Business Enterprises Program provides employment for 158 active vendors in state, federal, and a few county and municipal office buildings and various prisons and roadside rest stops throughout California. It is a viable program that I am actively working with staff to improve. I am working with the California Vendors Policy Committee (CVPC) to identify the program's strengths, weaknesses, and opportunities.



In February 2008, I assigned an existing Branch Chief as the Acting Business Enterprises Program Manager. In a few short weeks, he reviewed the programs' functions and collected data on the 158 active Program sites to identify the profitable locations for blind entrepreneurs. We will analyze the data and develop an action plan with the CVPC to improve the program. In addition, I directed a Deputy Director, to convene a Business Enterprises Program Futuring Taskforce, to identify areas that need improvement by June 30, 2008.

It is my goal to continue to maximize the high level of Social Security Reimbursements received by the DOR. The DOR strives to maximize the number of Supplemental Security Income (SSI) and Social Security Disability Income (SSDI) beneficiaries achieving successful employment outcomes and our collaborative services section works to obtain all available reimbursements from the Social Security Administration. As of September 2007, the Social Security Administration reimbursed \$12.8 million to the DOR for successful employment outcomes providing recovered case service dollars for increased services to consumers.

California's 29 Independent Living Centers have not received any new state or federal funds for their core services since 1998. In spite of the current budget crisis, I will work with the federal Rehabilitation Services Administration, the State Independent Living Council and the California Foundation for Independent Living Centers to identify strategies for increased federal funding so California's Independent Living Centers can continue to assist persons with disabilities to live independently, in their own communities and with dignity.

### **Vocational Rehabilitation Program**

- 2. The federal Rehabilitation Services Administration evaluates states using performance measures. Please give some examples of the performance measures used. How successful was the department overall in meeting the federal performance measures for the 2007 federal fiscal year? Were there measures where the department needs improvement? If so, please provide a few examples and what you are doing to increase performance.***

### **Response:**

The federal Rehabilitation Services Administration evaluates states using standards and indicators that primarily evaluate the quality and quantity of employment outcomes, and the provision of services to minorities. For example, the first evaluation standard measures the number and percentage of successful vocational placements each year, consumers' salaries commensurate with the minimum wage and average state wage, and consumers' ability to become self-supporting with their earnings. To meet the criteria for Standard One, a state Vocational Rehabilitation agency must meet four of the six indicators to pass successfully. The second evaluation standard measures the provision of services to minority applicants to ensure equal opportunities are provided.



The DOR successfully passed four of the six indicators the federal Rehabilitation Services Administration's evaluation standards required for federal fiscal year 2007. I am committed to achieving and surpassing the standards on an annual basis. At my direction and in response to past federal Rehabilitation Services Administration findings requiring corrective action; clear guidelines have been developed in the areas of timely eligibility determination, presumption of eligibility, timelines for initiation of services and substantiality of services.

As the DOR Director, I have implemented and supported a number of state-level initiatives to inform and empower consumers through outreach; improve vocational rehabilitation services delivery; develop and maintain collaboration with communities; and increase employment outcomes.

**3. *Please explain the state's order-of-selection process. How many individuals were served within the different categories of disability, and how many individuals are currently on the waiting list?***

**Response:**

The Department's Order of Selection process includes projecting the costs of providing continued services to consumers already in place, as well as just applying, and comparing those costs to available resources. If resources are not adequate to meet all projected costs, the DOR must declare that it is under an Order of Selection, meaning that it will serve individuals with the most significant disabilities first. The DOR has been operating under an Order of Selection process since September 1, 1995, serving individuals in Category I (most significant disabilities) and Category II (significant disabilities).

Under Order of Selection, the DOR re-evaluates its costs and resources on a quarterly basis. If it is determined that there are insufficient funds to serve all new consumers in both Category I and Category II, then the DOR must cease providing services to all new consumers first in Category II and then in Category I until funding becomes available.

In FY 2006-2007 DOR served approximately 120,000 consumers, 70% in Category I and 30% in Category II. Despite the current budget circumstances, the DOR is striving to keep both of these categories open to new consumers.

There were 340 consumers on the Category III (disabled) waiting list as of December 31, 2007. This number has dropped nearly every year since 1995, when Category III closed as referral agencies seldom refer consumers who will likely be placed on the waiting list.

**4. *How does DOR coordinate services for persons with developmental disabilities with the Department of Developmental Services? For example, do Vocational Rehabilitation field offices develop agreements with regional centers to serve a specified number of individuals with developmental disabilities?***

**Response:**

Ongoing coordination for individual consumers with developmental disabilities is managed locally with communication among the Regional Center case manager, DOR Counselor, Supported Employment service provider, and the consumer. Through regular communication and monitoring, consumer service coordination is seamless. Services and funding transfers follow standard procedures and timeframes to avoid lapses in service provision when consumers are transitioned from DOR to the Department of Developmental Services (DDS).

The DOR coordinates services for persons with developmental disabilities with DDS for each of the 14 DOR districts, Blind Field Services units, and 21 Regional Centers. Some districts have a Memorandum of Understanding (MOU) to clarify roles and responsibilities of each party in the process; others operate using regular collaborative stakeholder meetings. MOUs do not include the number of persons that will be served since regulations mandate services.

**5. *Has the department seen the need to modify VR programs in recent years to serve more persons with autism spectrum disorders? What kinds of modifications may have been necessary?***

**Response:**

The DDS statistics report that from June 1996 to June 2006 the 3-21 age group of persons with autism spectrum disorders represented 65.4% of the autism population, however, in June 2006 that percentage grew to 82.4%. The DOR is experiencing an increase in assessments and specialty supported employment services for autism spectrum disorder consumers.

This increase is reflected in the number of students diagnosed with autism spectrum disorder that are being served by special education. Over the past decade, this number has increased by 500%. As a result, the DOR is receiving a greater number of applications from secondary school students with autism spectrum disorder. The DOR, Department of Education and Local Education Agencies have jointly established 85 cooperative Transition Partnership Programs statewide to reach these students and transition them into meaningful employment.

The DOR is strategically planning, through quarterly meetings and regular communications with the DDS and with internal Supported Employment/Work Activity Program liaisons, to meet the needs of working age adults with autism spectrum disorders and to ensure that opportunities for meaningful integrated employment are available.

The DOR anticipates that this major influx of persons with autism spectrum disorder into the vocational rehabilitation program will impact counselor workload due to complex



needs, multiple services, and coordination and support of additional stakeholders. In addition to providing training to DOR staff, the following stakeholders will also require training and resources:

- Employment Service Providers
- Potential Employers
- Local Education Agencies
- Transportation Providers

The DOR will include autism spectrum disorder as a Medical Aspects course provided internally to staff on a regular basis. To address the need for training among stakeholders, the DOR developed two core trainings on early intervention for students to enhance partner knowledge and expertise around effectively serving the autism spectrum disorder population. Training highlights include an overview of autism spectrum disorder, current interventions, individualized vocational planning, job placement, and retention strategies.

### **Vocational Rehabilitation Specialized Services**

**6. *With the implementation of this bill, how were the services for the blind and visually impaired and deaf and hard of hearing changed? Please provide a breakdown of the consumers receiving VR specialized services by type of disability.***

#### **Response:**

The goals of the DOR's Specialized Services Division, established pursuant to SB 105 (Chapter 1102, Statutes of 2002), are:

- To assist persons who are blind and visually impaired and deaf or hard of hearing in gaining competitive employment.
- To increase economic opportunities for persons who are blind or visually impaired and deaf or hard of hearing.
- To enhance the independence and self-sufficiency of blind and visually impaired and deaf or hard of hearing persons.

To meet these goals, the DOR realigned administrators, counselors, and support staff to create a disability-specific division for blind and visually impaired and deaf or hard of hearing consumers. While staff continue to provide services in their geographic locations, they report to the Specialized Services Division instead of the local districts.

The primary change in services provided to blind and visually impaired and deaf and hard of hearing consumers is that they receive services from counselors familiar with

and trained to assist their specific disabilities. While all DOR counselors provide exceptional vocational rehabilitation services, counselors for the blind and counselors for the deaf specialize in serving these disabilities.

The following chart shows a breakdown of the types of disabilities (primary or secondary) served within the Specialized Services Division.

7/01/07 – 3/31/08	<u>Specialized Services Division</u>
Total	6888
ATBI (Acquired Traumatic Brain Injury)	79
Blind/Visually Impaired	5722
Developmental Disability	40
Deaf	12
Deaf/Blind	33
Hard of Hearing	6
Learning Disorder	258
No specific disability reported	6
Other	277
Physical	424
Psychiatric/Substance Abuse	31

### Olmstead Advisory Committee

**7. In your previous position as the executive director of the Nevada-Sierra Regional In-Home Supportive Services Public Authority, you served on the Olmstead Advisory Committee. Please describe your current role on the committee as the director of DOR.**

### Response:

At the request of the California Health and Human Services (CHHS) Secretary, Kimberly Belshé, I continue to participate in the Olmstead Advisory Committee meetings and engage with them on subjects to improve the delivery of long-term support services in the least restrictive environment and allowing for individuals' choice to remain in the community consistent with the principles of the *Olmstead* Decision. While not appointed to the committee, I work with the Secretary and other department directors regularly to review pending policies and procedural changes using an *Olmstead* Policy Filter. More broadly, as directors we interact with the committee in discussions that plan for our State's system of long-term supports for seniors and persons with disabilities.



As Director of the DOR, I have a key service delivery role in implementing *Olmstead*. More specifically, I serve as a liaison on employment issues. Maintaining a visible connection to the labor force of persons with disabilities increases the array of healthcare and other long-term care services available to choose among and allows for the potential leverage across both public and private plans and service coverage. My role with the Committee is also evident by the DOR's support of services in specific geographic areas within the State, such as our interagency agreement with the Department of Mental Health's Long-Term Care Services Division that facilitates vocational rehabilitation services to patients leaving four of the five state hospitals in California.

The DOR's Independent Living section supports core services of information and referral, independent living skills training, housing advocacy and referral for attendant services, individual and systems advocacy, and peer counseling through awarding grants to 29 not-for-profit independent living centers statewide. The DOR has helped to fund the Transition Services Dial Project at Westside Center for Independent Living to create a bridge for persons with disabilities from hospital, skilled nursing facility, or institutional facility to home. Working with the State Independent Living Council, the DOR makes available individual-based service funds to assist individuals returning to the community and needing one-time-only assistance for related costs (up to \$4,000).

My passion and commitment to the principles of the Supreme Court's *Olmstead* Decision have not changed, although I find myself listening more and talking less than I did when I worked at the In-Home Supportive Services Public Authority. Knowing my advocacy and In-Home Supportive Services background, other directors within the California Health and Human Services Agency have discussed various aspects of long-term care services with me with an eye toward improving programs and services.

### **Independent Living Centers**

- 8. *You are a former executive director of FREED Center for Independent Living. Do you believe the department's oversight of the state's independent living centers needs improvement? Why or why not? If yes, what are your plans to improve oversight?***

### **Response:**

I feel that the DOR does an adequate job overseeing the Independent Living Centers, although there is always room for improvement. Within the last nine months, nine of the 29 Independent Living Centers have lost their Executive Directors. Some Independent Living Centers Governing Boards have replaced their Executive Directors rather quickly while others seem less motivated. I have been working with the acting Chief of the Independent Living section to identify what authority the DOR has to force an Independent Living Center's Governing Board to take action when we feel they are not meeting the spirit of their mission. I have also actively participated in meetings with the State Independent Living Council and the California Foundation for Independent Living Centers, in which I shared my concerns about the Independent Living Centers leadership into the future.

Recently, the long-time Chief of the Independent Living Section retired and the Deputy Director of the Independent Living/External Affairs Division was appointed as special advisor to the director of the Office of Access and Functional Needs Coordination for the Governor's Office of Emergency Services. To ensure the DOR's oversight role continues, we are actively interviewing for the new Independent Living Section Chief and the Deputy Director of Independent Living and External Affairs.

## **Workforce and Succession Planning**

### **9. *What proportion of management and other staff of DOR are expected to retire in the next five years? What is DOR doing regarding succession planning to fill vacancies due to expected retirements?***

#### **Response:**

The DOR currently has approximately 1,742 employees (representing all classifications), in which approximately 447 (or 26%) are expected to retire in the next five years.

The portion of staff in management classifications that are expected to retire in the next five years is approximately 65%. The current managerial level staff consists of 26 employees at the Staff Services Manager III level and above, including Career Executive Appointees and Exempt appointees of which approximately 17 (or 65%) are expected to retire within this timeframe.

The portion of DOR supervisory staff expected to retire in the next five years is approximately 43%. The current supervisory level staff consists of 251 employees at the Staff Services Manager II level, including lower level managers and supervisors in administrative, technical, and program areas, of which approximately 110 (or 43%) are expected to retire within this timeframe.

The portion of entry and journey level staff expected to retire in the next five years is approximately 22%. The current entry and journey level staff consists of 1,465 employees, which includes the majority of our employees, who are in the counselor, clerical, and technical classifications, of which approximately 320 (or 22%) are expected to retire within this timeframe.

The DOR is an active participant on the CHHS Agency's Succession Planning and Management Workgroup, comprised of CHHS Department Directors, Chief Deputy Directors, Administration Deputy Directors, Personnel Officers, Training Officers, and Exam Supervisors. This workgroup is actively engaged in moving the CHHS Agency and its member departments forward in workforce planning and succession planning and recently developed and administered the first Open Staff Services Manager I examination given in state service in over 40 years. The intent of conducting this open exam was to reach out and bring in new talent from outside of state government to fill the ever-increasing vacancies within the first level management ranks. The DOR's



Human Resources staff played a key role in the success of this endeavor and took a leadership role in working with the State Personnel Board (SPB) to ensure that the exam was fully accessible - a first in state service examination history. In January 2008, the SPB recognized the DOR team that worked on this important project. Additionally, we received a commitment from the SPB that it will conduct future on-line exams with the same accessibility standards that were set with this exam. This effort represents a breakthrough in accessibility for individuals with disabilities.

I am creating a Succession and Workforce Planning Work Team comprised of DOR staff, State Rehabilitation Council members, and university and community partners to develop a comprehensive cross divisional and cross disciplinary plan by June 30, 2009 to address our anticipated significant workforce needs.

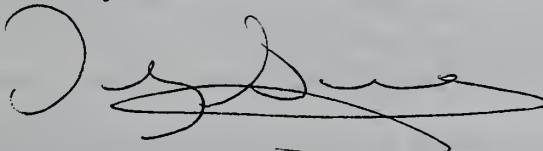
I am initiating an Executive Leadership Mentoring Program to retain talent to ensure continuation of historical knowledge within the DOR.

In 2008, I have directed staff or participated in the following:

- The CHHS Agency 2008 Convocation, which focused on succession planning. The DOR staff, including myself, acted as facilitators for a portion of the program and learned of the priorities of both the Governor's Office and the CHHS Agency.
- The DOR staff assisted in the design and pilot of the Leadership Development Academy, which focuses on building core leadership competencies and staff at the Staff Services Manager II level and above attended the actual training itself.
- The DOR managers and supervisors attend the CHHS Supervisor's Academy. This training is also designed around the CHHS Agency's core competencies. The DOR staff are responsible for the contract with the California State University, Sacramento's Office of Continuing Education, which conducts the training and coordination of the Executive Speaker Program. Both, the DOR Chief Deputy Director, Luciana C. Profaca and myself have presented as Executive Speakers and will return for future presentations.

I look forward to meeting with you on May 21, 2008 to further address these and other DOR related issues. Please feel free to contact me at (916) 558-5800.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tony Sauer', with a large, stylized initial 'T' and a long, horizontal flourish extending to the right.

ANTHONY "TONY" P. SAUER  
Director



State of California  
Health and Human Services Agency

Luciana C. Profaca, Ph.D.  
Chief Deputy Director  
Department of Rehabilitation  
721 Capitol Mall  
Sacramento, CA 95814  
(916) 558-5802 Voice  
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(916) 558-5807 TTY

The Honorable Senator Don Perata  
Chairman, Senate Rules Committee  
State Capitol, Room 420  
Sacramento, CA 95814-4900

May 9, 2008

Dear Senator Perata:

I am pleased to present you and the other members of the Senate Rules Committee with my responses to the questions outlined in your letter dated April 21, 2008. The questions you raised touch on issues that are very important to the Department of Rehabilitation (DOR) - from continuing to serve a changing and increasing population of individuals with disabilities during lean budget years to planning for workforce succession. While these challenges are not unique to the DOR, they are nonetheless critical to our success. I therefore welcome the opportunity to share my goals and the directions we are heading in each of these areas.

I have learned firsthand of the many challenges facing individuals with disabilities – both as a child witnessing my father's personal struggles as an individual with a significant disability, and also as a parent of a child with disabilities. I entered the rehabilitation counseling profession to empower people and assist them to achieve their personal goals and maximize their potential.

When I began my career with the DOR in 1972 as a Vocational Rehabilitation Counselor, directly out of graduate school, I could not have dreamed that I would one day be appointed the department's Chief Deputy Director. It has been a privilege throughout my 36 years with the DOR to experience the professional and life changing work performed in service to individuals with disabilities. And it is an honor now to be in a position that can affect positive, far-reaching changes in so many lives. I do not take my responsibilities lightly, but rather with great care and consideration of what is best for the department and its consumers.

### **Role of the Department**

The Department of Rehabilitation provides vocational rehabilitation services to individuals with disabilities. The purpose of the Vocational Rehabilitation program is to place individuals with disabilities in suitable employment or to provide short-term, intensive vocational rehabilitation for those individuals with developmental disabilities through supported employment and work activity program services. The DOR's mission is to work

**Senate Rules Committee**

MAY 07 2008

**Appointments**



in partnership with consumers and other stakeholders to provide services and advocacy resulting in employment, independent living, and equality for individuals with disabilities.

The DOR has approximately 1,863 positions and a \$385 million budget, of which \$56 million is General Fund. The largest program is the Vocational Rehabilitation program, the funding for which constitutes 95 percent of the DOR's total budget. The Vocational Rehabilitation program is a federal program, and the federal government pays for 85 percent of its costs. The DOR also administers the Independent Living Services program, whereby the department funds, administers, and supports 29 not-for-profit independent living centers throughout California. Lastly, the DOR also serves blind and deaf-blind individuals through counselor-teacher services, the purchase of reader services, and community-based projects to serve the elderly blind.

## **Goals**

***1. Please provide us with a brief statement of your goals. How will you measure your success at meeting these goals?***

## **Response:**

As the Chief Deputy Director, I will provide strong leadership and guidance to help the DOR successfully reach its program goals identified in the 2008 State Plan, and to surpass the standards and indicators for Vocational Rehabilitation programs established by the federal Rehabilitation Services Administration. In addition, I am personally committed to and directly involved with the DOR's efforts at:

- Developing an outreach campaign to recruit and retain qualified rehabilitation professionals into state service.
- Improving both internal communication within the organization and external communication with stakeholders.
- Improving the state of the Business Enterprises Program to insure that blind individuals wishing to become food service vendors are provided appropriate opportunities with clear accountability standards.
- Providing leadership in partnership with our State Personnel Board (SPB) and Employment Development Department (EDD) colleagues in the State as a Model Employer effort thereby increasing opportunities for individuals with disabilities into state employment.
- Accomplishing greater collaboration with our sister department, the Department of Developmental Services (DDS), to improve employment opportunities for persons with developmental disabilities, especially in State and Federal employment.
- Nurturing the already positive relationships with the State Rehabilitation Council, the State Independent Living Council, the California Foundation for Independent Living Centers, and the California Vendor's Policy Committee.
- Streamlining departmental personnel practices.

In general, I will measure my success in these areas by establishing appropriate objectives and achievable benchmarks, monitoring departmental progress, and analyzing outcomes to determine whether modifications to approaches should be made. However, because each goal is unique, I will tailor my approach accordingly.

To recruit and retain qualified rehabilitation professionals, the DOR is establishing a Succession and Workforce Planning Work Team. The DOR has identified several targeted objectives including outreach to increase college enrollments in the vocational rehabilitation field, and establishing recruitment and retention incentives. Because realizing the effect of these efforts may be years out, I will gauge interim success by monitoring progress at completing specified tasks aimed at these objectives.

Improving internal and external communications will begin by identifying communication gaps and requesting feedback at regular intervals. Based on responses, the DOR will implement necessary changes, and I will review subsequent feedback to determine whether improvements have been accomplished.

With regard to improving the Business Enterprises Program, it is the department's intention to prioritize expenditures by highest return on investment, and to discontinue low-yield spending practices. After implementing these changes, I will review expenditures and determine the effect on the trust fund balance. If expenditures are unfavorable or less than expected, I will modify the department's approach at meeting this goal.

With input from a stakeholder summit, the DOR, in collaboration with SPB and EDD, will develop a strategic plan to address needed changes within the State's hiring processes to ensure individuals with disabilities can fully access state employment opportunities. The DOR will then monitor the number of individuals with disabilities who enter state service (through SPB reporting) and assess the strategic initiatives.

I will measure success in achieving greater collaboration with the DDS through regular quarterly meetings with their staff. During these meetings, we will discuss the effectiveness of communication between the departments and identify practices and policies that improve the methods by which we serve individuals with disabilities.

To nurture positive relationships with the oversight councils, I will ensure the DOR listens to, and takes into account, the councils' views. I will also ask for the councils' expectations of the DOR and seek their opinion as to whether the DOR is meeting those expectations.

Finally, to streamline internal personnel practices, I will support the identification and implementation of new processes and training that will reduce the average number of days taken to process a new appointment. I will then review the outcomes to determine whether the average elapsed time is lower.

### **Vocational Rehabilitation Program**

- 2. The federal Rehabilitation Services Administration evaluates states using performance measures. How successful was the department in meeting the federal performance measures for the 2007 federal fiscal year? Are there specific areas where the federal government indicates the state needs improving? If so, please identify the areas and tell us the steps the department will take to improve in these areas.***



**Response:**

The DOR successfully passed four of the six indicators required by the Rehabilitation Services Administration in federal fiscal year 2007, and is committed to achieving and surpassing these standards on an annual basis. The DOR is also committed to addressing any concerns raised by the federal Rehabilitation Services Administration, and making improvements in other areas that will lead to greater efficiencies and quality of services.

After its last review, the Rehabilitation Services Administration noted findings on issues such as the timeliness of service delivery, and the education and experience of vocational rehabilitation counselors. In response, the DOR developed and submitted a corrective action plan that included initiating additional directives to ensure prospective DOR consumers' eligibility is determined within 60 days, that all consumers receiving Supplemental Security Income/Social Security Disability Income are found eligible upon application, that all services to consumers are provided within identified timeframes, and all services provided contributed to employment. Similarly, the DOR dedicated resources for the development of a comprehensive system of personnel development to ensure its counselor workforce is comprised of qualified rehabilitation professionals. At this time, the DOR is continuing its efforts to improve Supplemental Security Income/Social Security Disability Income eligibility determinations, and to ensure that services provided contribute to employment.

In addition to the corrective action plan, the DOR developed a program improvement plan. Successful strategies employed to improve performance included establishing at least one employment coordinator in each district to connect consumers with employers, providing disability awareness training sessions to workforce development systems within the State, and created a web page on the DOR website to provide disability related information and resources to employers.

**3. *Please explain the states's order-of-selection process. How many individuals were served within the different categories of disability, and how many individuals are currently on the waiting list?***

**Response:**

The Department's Order of Selection process includes projecting the costs of providing continued services to consumers already in place, as well as new eligible applicants, and comparing those costs to available resources. If resources are not adequate to meet all projected costs, the DOR must declare that it is under an Order of Selection, meaning that it will serve individuals with the most significant disabilities first. The DOR has been operating under an Order of Selection process since September 1, 1995, serving individuals in Category I (most significant disabilities) and Category II (significant disabilities).

Under Order of Selection, the DOR re-evaluates its costs and resources on a quarterly basis. If it is determined that there are insufficient funds to serve all new consumers in both Category I and Category II, then the DOR must cease providing services to all new consumers first in Category II and then in Category I until funding becomes available.

In FY 2006-2007 DOR served approximately 120,000 consumers, 70 percent in Category I and 30 percent in Category II. Despite the current budget circumstances, the DOR is striving to keep both of these categories open to new consumers.

There were 340 consumers on the Category III (disabled) waiting list as of December 31, 2007. This number has dropped nearly every year since 1995, when Category III closed as referral agencies seldom refer consumers who will likely be placed on the waiting list.

**4. *How does the DOR coordinate services for persons with developmental disabilities with the Department of Developmental Services? For example, do VR field offices develop agreements with regional centers to serve a specified number of individuals with developmental disabilities?***

**Response:**

Ongoing coordination for individual consumers with developmental disabilities is managed locally with communication among the Regional Center case manager, the DOR Counselor, the Supported Employment service provider, and the consumer. Through regular communication and monitoring, consumer service coordination is seamless. Services and funding transfers follow standard procedures and timeframes to avoid lapses in service provision when consumers are transitioned from the DOR to the DDS.

The DOR coordinates services for individuals with developmental disabilities with the DDS for each of the 13 DOR districts and the Blind Field Services units, and the 21 Regional Centers. Some districts have a Memorandum of Understanding to clarify the roles and responsibilities of each party in the process, while others operate using regular collaborative stakeholder meetings. Because regulations mandate the provision of services, the number of individuals that will be served is not specified, regardless of the agreement mechanism.

In addition to coordinating with the DDS, the DOR's Community Resources Development Unit provides consultation services and technical assistance to the DOR's 13 Districts and the Blind Field Services units in support of vendor partnerships that collaborate with community rehabilitation programs. The DOR staff also monitor Supported Employment and Work Activity Program services for compliance with the National Commission on Accreditation of Rehabilitation Facilities standards. Further, the DOR Community Resources Development staff work closely with local Districts, community rehabilitation programs, and the DDS as necessary to resolve any concerns or issues that may arise.

**5. *Has the department seen the need to modify VR programs in recent years to serve more persons with autism spectrum disorders? If so, how?***

**Response:**

Autism spectrum disorder is the fastest-growing special education eligibility category for public education in California and the nation. Between 1998 and 2002, the number of



pupils with autism spectrum disorder receiving services in California nearly doubled from 10,360 to 20,377. Departmentally, the DOR is receiving a greater number of applications from secondary school students with autism spectrum disorder. As a result, the DOR has needed to identify, plan, and prepare to serve more individuals with autism spectrum disorders.

On a broad level, the DOR is determining future needs of these consumers by monitoring internal activity and reports from the DDS and other stakeholders. Internal data substantiates that the DOR is experiencing an increase in assessments and specialty Supported Employment services for this population.

The DOR expects that a major influx of individuals with autism spectrum disorder, into the Vocational Rehabilitation program, will impact counselor workload due to the complex needs and multiple services necessary to effectively serve this population. The DOR also recognizes that it must provide training to its own staff, as well as to the following partners and stakeholders:

- o Employment Service Providers
- o Potential Employers
- o Local Education Agencies
- o Transportation Providers

To meet this need, the DOR's Collaborative Services Section has developed two core trainings to further the field's knowledge on accommodating the autism spectrum disorder population. The training will include an overview of autism spectrum disorder, current interventions, functioning levels across the autism spectrum, impairments in social interactions, autism spectrum disorder and educational impacts, and vocational planning and job placement/retention strategies. Additionally, in order to ensure that counseling staff receives the most current information available, the DOR Staff Development Section includes autism spectrum disorder as a Medical Aspects course provided internally on a regular basis.

## **Vocational Rehabilitation Specialized Services**

- 6. *With the implementation of this bill, how were the services for the blind and visually impaired and deaf and hard of hearing changed? Have the changes produced the changes intended?***

### **Response:**

In response to SB 105 (Chapter 1102, Statutes of 2002), the DOR realigned administrators, counselors, and support staff to create a disability-specific division for blind or visually impaired and deaf or hard of hearing consumers. The benefit of this change has enabled direct communication between counselors and the Specialized Services Deputy Director, who is familiar with and has expertise on blind and deaf service delivery issues.

The primary change in services provided to blind and visually impaired and deaf and hard of hearing consumers is that they receive services from counselors familiar with and trained to assist their specific disabilities. While all DOR counselors provide exceptional

vocational rehabilitation services, counselors for the blind and counselors for the deaf<sup>81</sup> specialize in serving individuals with these disabilities.

The implemented changes have resulted in the DOR successfully meeting the goals it set for the Specialized Services Division. More specifically, employment outcomes for blind and visually impaired consumers have steadily increased since the Division was established in 2003, while employment outcomes for the deaf and hard of hearing consumers have held steady. In addition, among the variety of services provided to DOR consumers, specialty job placement services have led to higher earnings at case closure for blind and visually impaired consumers. Moreover, the overall quality of services provided to the two stakeholder groups have improved under the guidance of staff proficient in rehabilitative techniques for blind or visually impaired and deaf or hard of hearing consumers and in concert with close working relations with our private sector partners.

### **Independent Living Centers**

#### ***7. What plans do you have to improve the department's oversight of the state's independent living centers?***

#### **Response:**

Assisting individuals with disabilities to gain or improve their independence is one of the tenets of the DOR's mission. I feel strongly that the independent living centers operate and provide services efficiently and effectively. Towards this end, I am committed to filling the vacant Independent Living and External Affairs Division Deputy Director position. I will also work with the new deputy to prioritize and dedicate internal resources for the purpose of conducting on-site reviews of the centers utilizing a monitoring plan developed by the DOR in conjunction with the State Independent Living Council and in accordance with the federal Rehabilitation Act.

While filling the Deputy position and conducting on-site reviews are important, I also believe that providing the centers with guidance and training is an essential oversight function. More specifically, I plan to work with the new deputy director to establish an independent living center training program for topics such as administrative, fiscal, and program requirements and best practices. In addition, I would like the DOR to provide training to new independent living center Executive Directors and Program Directors in areas such as the independent living philosophy, strategic planning, and sound business practices for not-for-profits.

Finally, as outlined in the statement of my goals, I want to improve communication and nurture the DOR's relationship with the State Independent Living Council and the California Foundation for Independent Living Centers to enable a strong collaborative effort towards improving the lives of individuals with disabilities. I will encourage and facilitate appropriate introductions between these organizations and the new Independent Living deputy director to promote a smooth and prompt transition.



## **Workforce and Succession Planning**

### ***8. What proportion of management and other staff of the DOR are expected to retire in the next five years? What is the DOR doing regarding succession planning to fill vacancies due to expected retirements?***

#### **Response:**

The DOR currently has approximately 1,742 employees (representing all classifications), of which approximately 447 (or 26 percent) are expected to retire in the next five years.

The portion of staff in management classifications that are expected to retire in the next five years is approximately 65 percent. The current managerial level staff consists of 26 employees at the Staff Services Manager III level and above, including Career Executive Assignments and exempt appointees of which approximately 17 are expected to retire within this timeframe.

The portion of DOR supervisory staff expected to retire in the next five years is approximately 43 percent. The current supervisory level staff consists of 251 employees at the Staff Services Manager II level, including lower level managers and supervisors in administrative, technical, and program areas, of which approximately 110 are expected to retire within this timeframe.

The portion of entry and journey level staff expected to retire in the next five years is approximately 22 percent. The current entry and journey level staff consists of 1,465 employees, which includes the majority of our employees, who are in the counselor, clerical, and technical classifications, of which approximately 320 are expected to retire within this timeframe.

To plan and prepare for these retirements, the DOR is establishing a Succession and Workforce Planning Work Team comprised of DOR staff, State Rehabilitation Council members, and university and community partners with the goal of developing a comprehensive, cross divisional and cross disciplinary succession plan by June 30, 2009 that will address anticipated significant workforce needs.

In addition, the DOR is an active participant in the California Health and Human Services (CHHS) Agency's Succession Planning and Management Workgroup, comprised of CHHS Department Directors, Chief Deputy Directors, Administration Deputy Directors, Personnel Officers, Training Officers, and Exam Supervisors. This workgroup is actively engaged in moving the CHHS Agency and its member departments forward in workforce and succession planning, and recently developed and administered the first Open Staff Services Manager I examination given in state service in over 40 years. The intent of conducting this open exam was to reach out and bring in new talent from outside of state government to fill the ever-increasing vacancies within the first level management ranks. The DOR's Human Resources staff played a key role in the success of this endeavor and took a leadership role in working with the SPB to ensure that the exam was fully accessible - a first in state service examination history. In January 2008, the SPB recognized the DOR team that worked

on this important project. Additionally, the DOR received a commitment from the SPB<sup>83</sup> that it will conduct future on-line exams with the same accessibility standards that were set with this exam. This commitment represents a breakthrough in accessibility for individuals with disabilities.

The DOR also plans for succession by promoting leadership skill building. This includes directing appropriate staff to attend succession planning activities such as the CHHS Agency 2008 Convocation, which focused on succession planning, and the Leadership Development Academy, as well as focusing on core leadership competencies during supervisor and manager-level meetings.

I look forward to meeting with you on May 21, 2008. If I can provide further information or clarification before this date, please don't hesitate to call me at (916) 558-5802.

Most sincerely yours,

A handwritten signature in cursive script that reads "Luciana C. Profaca".

LUCIANA C. PROFACA, Ph.D.  
Chief Deputy Director





# CITY OF LONG BEACH

## POLICE DEPARTMENT

400 WEST BROADWAY • LONG BEACH • CALIFORNIA 90802 • (562) 570-7260 • FAX (562) 570-7114

ANTHONY W. BATTS  
Chief of Police

May 14, 2008

Don Perata  
Senate Rules Committee  
State Capitol  
Room 420  
Sacramento, CA 95814-4900

Dear Mr. Perata:

In response to your letter of April 18, 2008, the following answers are provided:

1. Please provide us with a brief statement of your goals. What do you hope to accomplish as a member of the commission? How will you measure your success at meeting these goals?

My intended goals as Commissioner are to further the progression of all of the POST Strategic Plan stated objectives. However, my focus has been specifically related to the goal of enhancing the POST Organization. As Chair of the Committee, I, along with my committee members, successfully chose our current Executive Director, Mr. Paul Cappitelli. Mr. Cappitelli's appointment to this position has already enhanced the POST organization. I look forward to working with him and other POST Commissioners to focus particularly on improving the quality and impact of training law enforcement personnel. It is imperative that recruits and veteran officers alike are provided the most current, and innovative training tactics to stay in front of the increasingly creative criminal element in society.

2. Please spell out the role the commission is playing to help departments recruit qualified candidates. Do you see a wider role for your agency in publicizing the need for police personnel?

At the October 2007 meeting of POST the Commission approved three recommendations for further action by staff in support of agencies' recruitment efforts by increasing awareness of best practices, studying the feasibility of an online registry and studying the feasibility of an online self assessment center.

Don Perata  
Senate Rules Committee  
Page 2 of 4

With today's competitive work force it has become increasingly difficult to recruit qualified applicants to the field of law enforcement. All agencies will need to be inventive in their approach to recruitment. A POST marketing campaign, regional testing, recruiter training, enhancement to the POST Website to reflect career opportunities and links to agencies and pre-academy preparation materials for candidates are but a few suggested methods to assist organizations in their search for qualified candidates for law enforcement.

**3. The Commission's 2006 Strategic Plan said it was considering raising entry-level qualifications to become a peace officer. What is the status of that proposal? If it is done, how would the change affect recruitment?**

The 2006 Strategic Plan included three objectives to address this subject. They included:

- a. Feasibility of raising the entry-level education requirement above high school or GED;
- b. Feasibility of raising the entry-level reading and writing requirement; and,
- c. Feasibility of requiring reading and writing testing for entry into the basic academy.

At the October 2006 meeting the Commission deleted the above referenced plan objectives due to the negative impacts they would have upon law enforcement recruitment. However, a related objective, study the feasibility of establishing basic academy report writing standards, was reported to the Commission at its April 2008 meeting. Although resistance exists to imposing a report writing standard, strong support exists for a pre-academy report-writing curriculum that presenters could voluntarily adopt.

**4. Are efforts underway to diversify law enforcement agencies? If so, please describe.**

POST has no direct role in the hiring decisions made by law enforcement agencies. However, considerable interest was identified in work performed by POST to improve recruitment efforts within the law enforcement community. For many law enforcement agencies there continues to be both need and interest in ensuring that agencies reflect the diversity of the communities served.

Don Perata  
Senate Rules Committee  
Page 3 of 4

- 5. Open Records Court Case – The California Supreme Court last August ruled that POST must disclose the names, departments, hiring and termination dates of California law enforcement officers. What steps have you taken to comply with this ruling? What is the status of those efforts?**

During March 2008, POST fully complied with the decision of the California Supreme Court and direction by the Superior Court of Sacramento to provide specified information to the Los Angeles Times on peace officers in the POST database. That information included the names, agencies, and appointment and termination dates of all peace officers that were hired or left service from a law enforcement agency between January 1, 1995 and December 31, 2007.

- 6. Legislation – redefining the term “hate crime”. Please describe the commission’s progress toward meeting these requirements.**

POST designed an 8-hour course that meets the requirements of PENAL CODE Section 13519.6. Certified presenters of the course are the Simon Wiesenthal Museum of Tolerance in Southern California and Napa Valley College in Northern California. Additionally, a tele-course was developed and distributed to the field in 2002 and updated in 2006 to meet requirements of SB1234. POST is finalizing the document design for the Hate Crimes Policy Guidelines, to be distributed to all law enforcement agencies in 2008.

- 7. What steps have you taken to help department weed out potentially sub-par employees before they are hired. What sort of training is available on this topic?**

POST is responsible for conducting statewide research that results in the selection and training standards for entry-level peace officers and public safety dispatchers. This responsibility has included the development of valid selection tests used by California law enforcement agencies to identify qualified peace officer and dispatcher applicants as well as the development and maintenance of all written and performance tests used to assess the knowledge and skill levels of all peace officer trainees in California’s 40 basic training academies. In carrying these responsibilities, POST provides resources to the law enforcement hiring authorities that assist them in making hiring decisions. To this end, the resources that POST provides are designed to identify and screen qualified candidates into California law enforcement positions.

Don Perata  
Senate Rules Committee  
Page 4 of 4

**8. What progress have you made toward this goal?**

In 1991, ACR 58 established the POST learning Technology Resource Center (LTRC), which spearheaded the development of computer-based training programs. LTRC is now in the process of developing internet-based training programs and performance tools for California Law Enforcement access via the POST learning portal.

If you have any questions regarding the aforementioned, please do not hesitate to contact me at your convenience at 562-570-7301.

Sincerely,

A handwritten signature in black ink, appearing to read "Anthony W. Batts", written over a horizontal line.

Anthony W. Batts



## CALIFORNIA LEGISLATURE

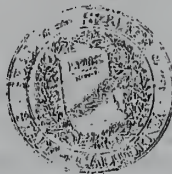
## MEMBERS

ROY ASHBURN  
VICE-CHAIR

GILBERT CEDILLO

ROBERT DUTTON

ALEX PADILLA



GREGORY SCHMIDT  
SECRETARY OF THE SENATE

NETTIE SABELHAUS  
APPOINTMENTS DIRECTOR

## SENATE RULES COMMITTEE

DON PERATA

CHAIRMAN

April 18, 2008

Lai Lai Bui

Dear Ms. Bui:

The Senate Rules Committee will conduct a confirmation hearing on your reappointment to the Commission on Peace Officer Standards and Training on Wednesday, May 21, 2008. You are not required to appear, but we request that you respond in writing to the following questions. Please provide your responses by May 8, 2008.

We would also like to receive an updated Form 700, Statement of Economic Interest, by May 8<sup>th</sup>.

### Goals

1. *Please provide us with a brief statement of your goals. What do you hope to accomplish as a member of the commission? How will you measure your success at meeting these goals?*

### Background

The Commission on Peace Officer Standards and Training (POST) was established by the Legislature in 1959 to set minimum selection and training standards for California law enforcement. It consists of 14 members appointed by the Governor plus the Attorney General. The POST organization, with more than 130 staff members, functions under the direction of an executive director appointed by the commission. POST coordinates a comprehensive training program with hundreds of certified courses.

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POST is seeking to enhance its services. One goal of the commission is to develop a comprehensive plan to address recruitment issues. "More leadership attention in workforce management is needed if executives are to successfully recruit and retain staff, while meeting the needs of the community as it grows and becomes more diversified," according to the POST Web site. At the same time, California law enforcement agencies are facing a challenge in finding qualified candidates to fill jobs in law enforcement. A year ago the *Contra Costa Times* reported that there were 15,000 vacancies among the 95,000 budgeted peace officer jobs in California.

2. *Please spell out the role the commission is playing to help departments recruit qualified candidates. Do you see a wider role for your agency in publicizing the need for police personnel?*
3. *The commission's 2006 strategic plan said it was considering raising entry-level qualifications to become an officer. What is the status of that proposal? If it is done, how would the change affect recruitment?*
4. *Are efforts underway to diversify law enforcement agencies? If so, please describe.*

### **Open Records Court Case**

The California Supreme Court last August ruled that POST must disclose the names, departments, hiring, and termination dates of California law enforcement officers.

5. *What steps have you taken to comply with this ruling? What is the status of those efforts?*

### **Legislation**

SB 1234 (Kuehl), Chapter 700, Statutes of 2004, redefines the term "hate crime," expands the material that the commission is required to include in its hate crime curriculum, requires the commission to develop and encourage all law enforcement agencies in the state to adopt a formal policy on hate crime law enforcement, with specified elements.

6. *Please describe the commission's progress toward meeting these requirements.*

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## Employment

The commission's strategic goals state, "The costs associated with subpar employee productivity, turnover, and counter-productive behavior are substantial, both from a monetary and public safety standpoint."

7. *What steps have you taken to help departments weed out potentially subpar employees before they are hired? What sort of training is available on this topic?*

## Web-based Training

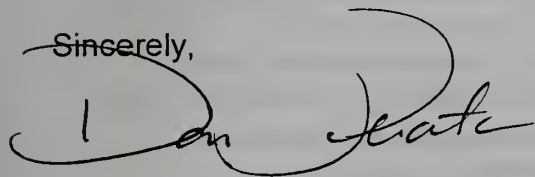
One of your strategic goals is to develop a distance-learning plan for the delivery of Web-based training.

8. *What progress have you made toward this goal?*

Please send your written answers to these questions to Nettie Sabelhaus, Senate Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Thank you for your help.

Sincerely,

A handwritten signature in black ink, appearing to read "Don Perata", with a large, stylized loop at the end.

DON PERATA

DP:MG

cc: Commission on Peace Officer Standards and Training

Lai Lai Bui  
Responses

Nettie Sabelhaus  
Room 420, State Capitol  
Sacramento, CA 95814

Dear Ms. Sabelhaus:

The following is a written response to questions you have provided me regarding my service with the Commission on Peace Officers Standards and Training(POST):

**Goals:**

1. I would like to continue to work with POST staff to develop innovative and advanced training for all law enforcement officers and dispatchers in our state. In particular, I'm in full support of POST's direction on improving drivers' safety by reanalyzing our current training methods. I have also asked staff to work with state and federal transportation commissions to see if we can also improve public knowledge and awareness regarding how they should respond around emergency vehicles.

Additionally, I would like to research the common physical ailments and injuries that plague most law enforcement officers and then develop targeted strength training for prevention and accelerated healing. I believe that this may help officers recover faster for full duty, save their careers from early retirement, and also save state and local agencies from costly medical or retirement expenses. We would measure our success by decreased injuries/deaths and overall stakeholder satisfaction.

2. The commission has contributed greatly to developing recruitment techniques that could be shared with all agencies. POST has developed a Recruitment and Retention: Best Practices manual. It is a compilation of strategies and techniques successfully used by recruiters throughout the state. Currently, we are working on how to improve law enforcement's image as a profession so that we could build better community relations as well as our appeal to potential candidates. POST has also hosted numerous recruitment symposiums to provide training.
3. The plan to raise entry-level qualifications to become an officer was deleted from the 2006 strategic plan. We recognized that law enforcement agencies throughout the state have had difficulty filling current vacancies, and we did not want to exacerbate the problem. We believe that our current guidelines are still helping agencies recruit and hire qualified personnel.

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**Appointments**



4. Law enforcement agencies have long realized that their agencies need to reflect the communities they serve. POST has contributed to this effort by dedicating a whole section on *Diversity Recruitment* in the 2006 Recruitment and Retention: Best Practices manual (Chapter 3) and *Developing External Partnership to Improve Diversity Recruitment* (Chapter 8).

#### **Open Records Court Case:**

5. In March 2008, POST has fully complied with the CA Supreme Court ruling by providing the Los Angeles Times with law enforcement agencies' rosters covering the period of January 1, 1995 through December 31, 2007.

#### **Legislation:**

6. POST has updated its 8-hour Hate Crimes course to meet the requirements of SB 1234. The Commission has approved the *Hate Crimes Policy Guidelines* publication which will be distributed to all law enforcement agencies in mid 2008. Additionally, POST has developed a telecourse based on the guidelines for continued professional and basic academy training that will be released Fall 2008.

#### **Employment:**

7. POST has provided guidelines to all agencies to help them select the most qualified candidates. There are guidelines that address Background Investigations, Medical Screening, Psychological Screening, Pre-Offer Personality tests, and Public Safety Dispatcher testing. POST is currently working on a plan to help agencies integrate these guidelines into their own selection process. POST has also hosted seminars that deal ADA and FEHA's impact on hiring and training.

#### **Web-based Training:**

8. Web-based training has been an overwhelming success. There have been over 17,000 registered users. Law Enforcement officers and dispatchers have been able to learn on-line without having to incur travel, lodging and presentation costs. They have been able to learn on their own schedule and at their own pace without the pressures of time. POST is also developing programs that give officers on-the-job assistance such as Search Warrant Development so that officers will have easy access to this type of information at any time of the day.

I hope that I have sufficiently answered the questions provided. Please feel free to call me with any additional comments or concerns. It has been an honor to serve on the POST Commission. I will maintain my dedication to continuously improve training for all law enforcement officers and dispatchers.

Sincerely,

Lai Lai Bui

***Collene (Thompson) Campbell***

May 7, 2008

**Reference: Senate Rules Committee Confirmation Hearing, regarding  
appointment of Collene Campbell to the Commission on Peace  
Officer Standards and Training.**

**Nettie Sabelhaus**

Senate Rules Committee Appointments Director  
Room 420, State Capitol  
Sacramento, CA 95814

Thank you for your communication and consideration regarding my pending confirmation for an appointment as a member of the Peace Officer Standards and Training Commission. As a former POST Commissioner, chairperson and currently a member of the Commission, I certainly understand the tremendous importance of this appointment and my obligation. As one of the hardest hit crime victims in our nation, I closely relate to the critical need for skillfully trained and expertly managed law enforcement.

I believe I bring important (and hopefully unmatched) personal knowledge regarding the necessity for well trained officers. Due to the long and dangerous twenty-five years of murder trials, with the three homicides in my family, I hav, hopefully, been able to contribute new thoughts regarding our enormous battle against crime and an improved justice system. Please forgive me for bringing up the foregoing subject matter that I was not asked, but I felt important for you to understand. My responses to the Senate Rules Committee questions are as follows:

***Goal:***

1. *Please provide us with a brief statement of your goals. What do you hope to accomplish as a member of the commission? How will you measure your success at meeting these goals?*

Like all Commissions my goal is for the superior training of law enforcement. My background and experience is very different than most. As one of the hardest hit crime victims in the Nation, I am focused in various areas where I believe there could be improvement. In brief: one of my top goals is to have all law enforcement understand that "No one is trained to be a victim of violent crime." Improved communications between law enforcement and victims / saviors is critical. Along with POST staff and many others, I have personally dedicated a great deal of time, information, contacts and energy to develop a POST DVD to help train victims how to better work with law enforcement; help the victim to properly furnish important information to the investigating officer; assist the victim to better understand the system,

(continued)

**Senate Rules Committee**

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thereby, saving countless hours of law enforcement time and possibly furnishing the victim with knowledge to better aid law enforcement in solving their case. This 90-minute DVD contains information from superior court judges, public defenders, prosecutors, investigators, victim witness personnel and some very "hard hit" victims of violent crime. It is one of my goals to have the first investigating officer (not the responding officer) give a copy of POST's "Victims of Violence" DVD to the victim and their family. I'll be happy to furnish more information on the importance of "this goal".

F.Y.I., I was on the POST Commission in 1997 during the development of the Strategic Plan which provides goals for the Commission and is a valuable source where Commissioners may find subjects rich in information and content. Since that time, the Strategic Plan has been revised and updated every two years. It reflects input from various law enforcement stakeholders (e.g., chiefs, sheriffs, trainers, law enforcement labor and professional associations), Commissioners and POST staff. The Commission adopts each revision and approves every update regarding the status or progress being made by POST staff working on each objective. The Strategic Plan provides direction to every member of POST staff regarding priorities, building for the future and raising the bar in law enforcement selection and training.

Specific to my goals, I would identify the following as the most important (in addition to providing a training DVD to on victims how to better work with law enforcement: (1) enhance training standards, with an emphasis on good recruitment and retention of quality candidates. (2) Maximize training delivery strategies by making the best use of the latest available technologies, (3) emphasis POST's role as a service provider to local law enforcement and educational institutions that provide public safety training, and (4) re-enforce strategies and practices that make the best use of the resources of the Peace Officers Training Fund.

1. *Please spell out the role the commission is playing to help departments recruit qualified candidates. Do you see a wider role for your agency in publicizing the need for police personnel?*

The crises of recruitment and retention of quality law enforcement personnel has been a focus of POST and the vast majority of California law enforcement organizations. Staff has been continually working to improve the Strategic Plan objective C.3.06 which deals with the development of a comprehensive plan, which continues to focus on recruitment.

I personally believe it is critical that POST and law enforcement concentrate on better public relations dealing with officers' positive impact on our lives and society. They need to develop plans and personnel to obtain positive media attention. We must continue to support local agency recruitment efforts through recruitment workshops, best practices research, covering the theme of recruitment and retention into as many POST programs as possible.

2. *The Commission's 2006 Strategic Plan said it was considering raising entry-level qualifications to become a peace officer. What is the status of that proposal? If it is done, how would the change affect recruitment?*

(continued)



The Commission took action on several Strategic Plan Objections dealing with this issue. Under today's circumstances and after careful study and reflection, it was determined that many of the issues described could very well have a negative impact on recruitment. The Commissioners felt that more research and consideration of cognitive testing was appropriate. POST stakeholders rejected the objective and instead asked POST to develop additional resources for academy staff to assist students to improve reading and writing skills.

3. *Are efforts underway to diversify law enforcement agencies? If so, please describe.*

POST has no direct role in the hiring decisions made by law enforcement agencies. However, considerable interest was identified in work performed by POST to improve recruitment efforts within the law enforcement community. For many law enforcement agencies there continues to be both need and interest in ensuring that agencies reflect the diversity of the communities served. This is illustrated in surveys conducted by POST staff in 2000, 2005 and 2007. With this in mind, staff worked with subject matter experts and law enforcement and human resource professionals to develop best practices that agencies can use in addressing the need to increase gender and ethnic diversity within law enforcement agencies.

One of the publications developed by POST to assist agencies in their efforts to increase diversity in the workforce is found in *Peace Officer Recruitment and Retention: Best Practices – July 2001* (<http://www.post.ca.gov/selection/recruit.pdf>). It contains several sections on ways to improve diversity in the recruiting process. They include: *Selecting Your Agency Recruiter, Creating the Future Recruiting Pool, Out of State Recruitment and Background Investigations, Identifying Target Audiences, Job Fairs and Special Events and Bilingual Pay*.

Another publication developed by POST to assist agencies in their efforts to increase diversity in the workplace is found in *Recruitment and Retention Best Practices Update April 2006* (<http://www.post.ca.gov/training/bestpractices/RecruitmentBestPrac.pdf>). It contains an entire chapter dedicated to *Diversity Recruitment* (Chapter 3) and *Developing External Partnership to Improve Diversity Recruitment* (Chapter 8).

***Open Records Court Case:***

The California Supreme Court last August ruled that POST must disclose the names, departments, hiring, and termination dates of California law enforcement officers.

4. *What steps have you taken to comply with this ruling? What is the status of those efforts?*

March 2008, POST complied with the decision of the California Supreme Court in March 2008 when directed by the Superior Court of Sacramento to provide specified information to the *Los Angeles Times* on peace officers in the POST database.

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January 2008, POST issued instructions to all agencies to download a roster containing the names of officers covered by the court decision and indicate the names of officers to be protected from disclosure due to safety or security reasons. Agencies were advised that to protect names selected for redaction, some form of justification would be needed.

It was agreed, in a conference with *Times*' legal counsel, that POST would compile the information for submission to the *Times* during the week of March 3, 2008. On February 15, 2008, both POST and the *Los Angeles Times* submitted a status report to the court. By February 29, 2008, more than 535 agencies had reviewed the rosters and taken action to protect more than 2,300 names from disclosure. Approximately 105,000 names are contained in the 10-year period affected by the Supreme Court's decision. The information was given to the *Times* during the first week in March.

POST is in the process of paying the *Los Angeles Times*' attorneys' fees and other costs ordered by the Superior Court. The amount of the fees, not including those paid to the Commission's legal counsel, amounted to \$239,000. Once this is done, this matter will be concluded.

### ***Legislation:***

SB 1234 (Kuehl), Chapter 700, Statutes of 2004, redefines the term "hate crime," expands the material that the commission is required to include in its hate crime curriculum, requires the commission to develop and encourage all law enforcement agencies in the state to adopt a formal policy on hate crime law enforcement, with specified elements.

5. *Please describe the commission's progress toward meeting these requirements.*

### **To give you a more complete and accurate report, I obtained the following information from the POST staff:**

An 8-hour course that meets the requirements of Penal Code Section 13519.6, was designed by POST. Certified presenters of the course are the Simon Wiesenthal Museum of Tolerance, in Southern California and Napa Valley College, in Northern California. Additionally, a Telecourse was developed and distributed to the field in 2002. The course was updated in 2006, to meet requirements of SB 1234, in collaboration with subject matter experts and the Senate Office of Research.

In 2006, the Hate Crime curriculum was updated to include the Attorney General's opinion (No. 04-1104, 8-15-05) which reads, "...the intentional selection of a victim with a protected characteristic is not sufficient to constitute a hate crime; a subjective attitude amounting to bias motivation is an essential element of the offense."

Subsequent to the development of the hate crime training courses for law enforcement officers (both in-service and basic training) in 2006, the POST Commission in January 2008 approved the *Hate Crimes Policy Guidelines* for California law enforcement (Attachment D). State agencies are required by statute and local law

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enforcement agencies are encouraged to create or revise their hate crime policy to conform to the new framework for hate crime policies approved by the Commission. POST is finalizing the document design for the *Hate Crimes Policy Guidelines* publication, and it will be distributed to all law enforcement agencies in mid-2008. Additionally, the legislative mandate for hate crime training has been approved by the Commission for incorporation as a regulation.

In February 2008, POST began development of a new Telecourse program based on the *Hate Crimes Policy Guidelines*. Designed for continuing professional training (CPT), this DVD video program will examine the development of state and local agency policy, the impact of hate crimes on at-risk populations, victim support services, hate crime response and investigation, working with the community to prevent hate crimes, developing hate crime training, mandatory reporting requirements, and ongoing agency responsibilities. The video will feature high-quality, interactive scenarios for law enforcement audiences. The Telecourse is scheduled for release in Fall 2008.

When completed, POST will also provide a selection of the Telecourse video scenarios to instructors at the 40 Basic Academies for use with Learning Domain 42 (Cultural Diversity/Discrimination) training. Participants of this portion of the Basic Course will review a minimum of two scenarios and participate in facilitated discussion that addresses hate crime.

### ***Employment:***

The commission's strategic goals state, "The costs associated with subpar employee productivity, turnover, and counter-productive behavior are substantial, both from a monetary and public safety standpoint."

6. *What steps have you taken to help departments weed out potentially subpar employees before they are hired? What sort of training is available on this topic?*

POST is responsible for conducting statewide research that results in selection and training standards for entry-level peace officers and public safety dispatchers. This responsibility has included the development of valid selection tests used by California law enforcement agencies to identify qualified peace officer and dispatcher applicants as well as the development and maintenance of all written and performance tests used to assess the knowledge and skill levels of all peace officer trainees in California's 40 basic training academies.

POST staff works closely with local law enforcement agencies to provide these services. This collaboration helps ensure that the best possible candidates are selected to fill California's law enforcement ranks, and assures that all standards and procedures are job-related and legally defensible, as required by state and federal employment laws. Additionally, POST staff works closely with all basic training academies in California to ensure that the candidates master the knowledge and skills required of peace officers.

In carrying out these responsibilities, POST provides resources to the law enforcement hiring authorities that assists them in making hiring decisions. In reality, it is not POST but the law enforcement authority that makes the hiring decision.

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POST assists by developing and providing a variety of tools (e.g., reading/writing tests, background investigation procedures, and medical screening guidelines) that are designed to educate and inform the decision-makers regarding minimum candidate requirements. To this end, the resources that POST provides are designed to identify and screen qualified candidates into California law enforcement positions.

### *Web-based Training*

One of your strategic goals is to develop a distance-learning plan for the delivery of Web-based training.

#### *7. What progress have you made toward this goal?*

Personally, I am constantly encountered with the many states that turn to California to duplicate our training. California is most definitely recognized as the Nations leader in law enforcement training. POST staff continues to do a great job on managing very successful training programs. POST has long been a leader in the development of technology-based training for law enforcement. In 1991, ACR 58 established the POST Learning Technology Resource Center (LTRC), which spearheaded the development of computer-based training programs, first on interactive videodisc and then on CD-ROM. LTRC is now developing Internet-based training programs and performance tools for California law enforcement accessed via the POST Learning Portal.

Staff is greatly limited without permanent funding, yet they have managed to produce and support some successful training programs. Currently, the Portal hosts instructor and law enforcement resources, discussion groups, and training courses. Statistics point to the portal's success as follows: Registered Users, 17,523; Course Completions (4 courses) 16,359; Resource Downloads 20,343.

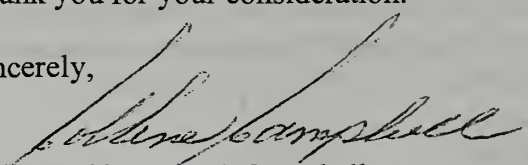
POST has set high standards for online training. This push for quality learning experiences for the student has paid off. Comments by users have been overwhelmingly positive about the courses, and they would like to see more training available via the Learning Portal. There are several training and related resources available on the Learning Portal.

Administrative plans include the establishment of an advisory council to help staff determine and overall plan for online training. Examples of items the council could address include the development of process and methodology for identifying needed training, determining priorities for research, and the development of policies and guidelines for the use of the various products created.

I have had an extensive quarter-of-a-century, personal education in the field of crime, served in many leadership roles, including two-term mayor, ten years city council, fourteen years on planning commissions and corporate CEO. Hopefully, I can continue to serve the State of California as a totally committed POST Commissioner, that is on no one's payroll.

Thank you for your consideration.

Sincerely,



Collene (Thompson) Campbell



## CALIFORNIA LEGISLATURE

## MEMBERS

ROY ASHBURN  
VICE-CHAIR

GILBERT CEDILLO

ROBERT DUTTON

ALEX PADILLA



GREGORY SCHMIDT  
SECRETARY OF THE SENATE  
NETTIE SABELHAUS  
APPOINTMENTS DIRECTOR

## SENATE RULES COMMITTEE

DON PERATA  
CHAIRMAN

April 18, 2008

Scott B. Himmelstein

Dear Mr. Himmelstein:

The Senate Rules Committee will conduct a confirmation hearing on your appointment to the Commission on Peace Officer Standards and Training on Wednesday, May 21, 2008. You are not required to appear, but we request that you respond in writing to the following questions. Please provide your responses by May 8, 2008.

We would also like to receive an updated Form 700, Statement of Economic Interest, by May 8<sup>th</sup>.

### Goals

1. *Please provide us with a brief statement of your goals. What do you hope to accomplish as a member of the commission? How will you measure your success at meeting these goals?*

### Background

The Commission on Peace Officer Standards and Training (POST) was established by the Legislature in 1959 to set minimum selection and training standards for California law enforcement. It consists of 14 members appointed by the Governor plus the Attorney General. The POST organization, with more than 130 staff members, functions under the direction of an executive director appointed by the commission. POST coordinates a comprehensive training program with hundreds of certified courses.

POST is seeking to enhance its services. One goal of the commission is to develop a comprehensive plan to address recruitment issues. "More leadership attention in

Scott B. Himmelstein  
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workforce management is needed if executives are to successfully recruit and retain staff, while meeting the needs of the community as it grows and becomes more diversified," according to the POST Web site. At the same time, California law enforcement agencies are facing a challenge in finding qualified candidates to fill jobs in law enforcement. A year ago the *Contra Costa Times* reported that there were 15,000 vacancies among the 95,000 budgeted peace officer jobs in California.

2. *Please spell out the role the commission is playing to help departments recruit qualified candidates. Do you see a wider role for your agency in publicizing the need for police personnel?*
3. *The commission's 2006 strategic plan said it was considering raising entry-level qualifications to become an officer. What is the status of that proposal? If it is done, how would the change affect recruitment?*
4. *Are efforts underway to diversify law enforcement agencies? If so, please describe.*

### ***Open Records Court Case***

The California Supreme Court last August ruled that POST must disclose the names, departments, hiring, and termination dates of California law enforcement officers.

5. *What steps have you taken to comply with this ruling? What is the status of those efforts?*

### ***Legislation***

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6. *Please describe the commission's progress toward meeting these requirements.*

Scott B. Himmelstein  
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## Employment

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7. *What steps have you taken to help departments weed out potentially subpar employees before they are hired? What sort of training is available on this topic?*

## Web-based Training

One of your strategic goals is to develop a distance-learning plan for the delivery of Web-based training.

8. *What progress have you made toward this goal?*

Please send your written answers to these questions to Nettie Sabelhaus, Senate Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Thank you for your help.

Sincerely,



DON PERATA

DP:MG

cc: Commission on Peace Officer Standards and Training

Response to Senate Rules Committee regarding confirmation hearing of Scott Himmelstein to the POST Commission.

1. The POST Commission recently approved a biennial update of the POST Strategic Plan of 2008. My goals are consistent with that plan which seeks to :
  - a. Raise the bar on selection and training
  - b. Improve quality and impact of training
  - c. Enhance POST services
  - d. Enhance the Post organization and staff

The criteria for meeting success are clearly defined in the strategic plan. For example, the Commission, working with regional training academies will develop new personality and physical ability assessment s for entry level selection by July of 2008. In addition, POST will compare its selection and training guidelines with those of other states also by July of 2008.

2. At the October 2007 meeting the POST Commission approved three recommendations to support agencies recruitment efforts:
  - a. Increase the awareness of best practices
  - b. Study the feasibility of an online registry
  - c. Study the feasibility of an online self assessment center

In October of 2007 POST completed a survey of law enforcement agency executives regarding recruitment and retention. Responses to the question regarding what POST can do to assist agencies with recruitment included: a POST marketing campaign, regional testing, recruiter training, enhanced POST website to reflect career opportunities and links to agencies, develop best practices on recruitment, and pre-academy preparation materials for candidates. With the exception of a POST marketing campaign, POST has provided the suggested resources to law enforcement agencies.

3. This strategic plan objective was deleted the Commission at its October 2006 meeting well before I became a Commissioner. The Commission approved the staff recommendation not to raise the education requirements because of the negative impact it would have upon law enforcement recruitment.
4. POST has no direct role in hiring decisions made by law enforcement agencies, However, POST has worked with subject matter experts and law enforcement and human resource professionals to develop best practices that agencies can use in addressing the need to increase gender and ethnic diversity within law enforcement agencies. Publications developed by POST to assist agencies with diversity include: Officer Recruitment and Retention: Best Practices and its most recent update in April of 2006.



5. In January of 2008, POST issued instructions to all agencies to download a roster containing the names of officers covered by the court decision and indicate the names of officers to be protected from disclosure due to safety or security reasons. Agencies were advised that to protect names selected for redaction, some form of justification would be needed. In March of 2008, POST fully complied with the decision of the California Supreme Court. The information provided included the names, agencies, and appointment and termination dates of all peace officers who were hired or left service from a law enforcement agency between January 1, 1195 and December 31, 2007.
6. POST designed an 8 hour course that meets the requirements of penal code 13519.6. Certified presenters of the course are the Simon Wiesenthal Museum of Tolerance, in Southern California and Napa Valley College, in Northern California. The course was updated in 2006 to meet the requirements of SB 1234, in collaboration with subject matter experts and the Senate Office of Research. In addition, at its January 2008 meeting the Commission approved the Hate Crimes Policy Guidelines for California law enforcement. The guidelines will be distributed to all law enforcement agencies in mid 2008.
7. POST works closely with local law enforcement agencies to provide selection and training standards for entry level peace officers and public safety dispatchers. This includes maintenance of all written and performance tests used to assess the knowledge and skill levels of all peace officer trainees in California 40 basic training academies. This collaboration helps ensure that the best possible candidates are selected and assures that all standards and procedures are job related and legally defensible, as required by state and federal employment laws.
8. POST has established the Learning Technology Resource Center which is now developing internet-based training programs and performance tools for California law enforcement via the POST learning portal. Currently the portal host instructor and law enforcement resources, discussion groups, and training courses. Statistics point to the portal's success:

Registered users	17,523
Course Completions	16,359
Resource Downloads	20,343

Courses that will be developed in 2008 include officer safety, identity theft and environmental crimes investigation.

May 3, 2008

Nettie Sabelhaus  
Senate Rules Committee Appointments Director  
Room 420, State Capitol  
Sacramento CA 95814

Dear Ms. Sabelhaus:

In preparation for the Senate Rules Committee confirmation hearing on my reappointment to the Commission on Peace Officer Standards and Training, the following are my responses to the questions I received from Chairman Perata.

***1. Please provide us with a brief statement of your goals. What do you hope to accomplish as a member of the commission? How will you measure your success at meeting these goals?***

During my second three-year term on the Commission, I intend to focus on accomplishing the following goals:

- **Strong Fiscal Management:** The POST Commission, like most State agencies and departments, is facing significant budget reductions for this and possibly future years in order to help balance the State budget. It will be critical for the Commission to work with our Executive Director to identify reduction strategies that minimize adverse impact to our customers – the local law enforcement agencies throughout the State – and maintain the high standards and quality of training that POST is known for. Success in accomplishing this goal will be measured through feedback from stakeholders and in the Commission's ability to balance our budget even with reductions.
- **Continual Improvement of POST Organization:** The overall success of the POST Commission and its programs depends on the talent and effectiveness of POST staff. The appointment of our new Executive Director affords a unique opportunity to evaluate the needs of POST as an organization, including staff development, succession planning, and recruitment/retention of POST employees. During my term, I look forward to working with our new Executive Director on continuing to develop POST and its employees as an efficient organization focused on providing consistently excellent service and program delivery in a fiscally responsible manner. Feedback from POST staff and customers will be critical in measuring internal improvements.
- **Development of Distance and On-line Learning Opportunities:** As cities and counties face their own fiscal challenges, the need to deliver quality training for local peace officers in a cost effective manner becomes even more important. The POST on-line Learning Portal and interactive DVD technology have proven to be excellent methods to train large numbers of peace officers without incurring travel and overtime costs. While many courses still must be delivered primarily through classroom or practical instruction, other courses and learning tools lend themselves to electronic delivery, such

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**Appointments**

as the new search warrant preparation tool currently in development. I would like to identify new opportunities for on-line and DVD training to increase the number of course offerings using these technologies.

- Reduce Officer Injuries and Deaths: Each year in California, peace officers are killed or seriously injured as a result of felonious assaults or accidents, some of which are likely preventable. Preventing officer injuries and deaths requires sound employment standards and screening methods, effective and continual training, adherence to policies and procedures, and studies to identify factors that contribute to officer deaths and injuries so that training and policies may be adjusted when necessary. POST must continually examine its role in developing and delivering training focused on high risk areas for peace officers. Under the Commission's direction, POST staff is currently conducting a comprehensive analysis of the effectiveness of the driver training programs in order to identify ways the training can be improved to help reduce the number of officers killed in driving incidents. This extremely important goal will be measured over time by the rate of peace officers killed in traffic collisions.
- Continue to Promote a Collegial and Professional Commission Atmosphere: The POST Commission is comprised of appointees representing various constituencies including law enforcement labor groups, agency executives, and community members. This composition provides a diversity of viewpoints and experience that is critical to the Commission's work, but which can sometimes lead to differences in opinion regarding Commission decisions and actions. For the past three years, I have worked diligently to create a professional and respectful atmosphere among Commission members even when points of views differ. This involves listening and striving to understand each Commissioner's thoughts and concerns, and finding compromise when appropriate. I intend to continue to promote these principles, especially during my tenure as Chairperson of the Commission during 2008/09.
- Continue to Make Progress on POST Strategic Plan: Since 1997, POST has adopted a strategic plan which is updated and revised every two years (most recently in 2008). The strategic plan serves to prioritize the work of the Commission and staff, reflects the input of numerous stakeholders, and helps allocate financial and personnel resources. The strategic plan is organized into four goals, with more specific objectives identified for each goal. The goals are: Raise the bar on selection and training; Improve quality and impact of training; Enhance POST's services; and Enhance the POST organization and staff. It is critical that the Commission provide active and ongoing oversight of the strategic plan to ensure progress is being made on each goal and objective, and that modifications are made if necessary.

2. *Please spell out the role the Commission is playing to help departments recruit qualified candidates. Do you see a wider role for your agency in publicizing the need for police personnel?*



For the past several years, the Commission has implemented several strategies designed to help law enforcement agencies recruit qualified candidates. The current POST strategic plan contains an objective specific to this issue: *Develop a comprehensive plan for POST's role in addressing law enforcement recruitment issues* (objective C.3.06). In addition to officers, public safety dispatchers are now included in this objective. The following are some of the initiatives POST has undertaken to improve recruitment:

- Recruitment Symposiums: Between 1989 and present, POST has conducted five law enforcement recruitment symposiums to present best practices in recruiting and retaining law enforcement officers.
- Recruitment Survey: In October 2007, POST conducted a survey of local law enforcement agency executives to identify their specific recruiting concerns and suggestions about how POST can assist in the recruitment effort. The survey indicated that executives were concerned about the length of time required to complete the selection process, the competition for candidates among agencies, the reduced interest in becoming peace officers, and the challenges in creating diverse agencies in light of the recruiting challenges.
- Recruitment Resources: In response to the survey, POST provided agencies with information regarding best practices in recruiting and regional testing methodologies. Training for recruiters was offered and pre-academy preparation materials for peace officer candidates were made available. The POST website was expanded to include job listings and links to agency websites.
- Publications: In 2001, POST published a comprehensive resource document called *Peace Officer Recruitment and Retention: Best Practices – July 2001*, which provided research-based best practices for the recruitment and retention of peace officers. An update was published in 2006 and both publications were distributed to law enforcement agencies and made available on the POST website.
- Continued Objective: In October 2007, the Commission updated its strategic plan objective dealing with recruitment by adding three additional recommendations for POST staff: 1) increase awareness of best practices, 2) study the feasibility of an Online Registry, and 3) study the feasibility of an Online Self-Assessment Center. Staff is working on these tasks and will update the Commission in July 2008.
- Supporting Related Legislation: The Commission tracks and takes positions on proposed legislation that would likely impact the mission and objectives of POST. The Commission recently voted to support a bill that would create a law enforcement vocational track for high school and community college students. The Commission felt such a program would generate interest in law enforcement as a career and increase the pool of qualified candidates.



I believe the POST Commission needs to continue its efforts to assist local agencies in recruiting qualified law enforcement officers and dispatchers, including exploring a possible role for POST in promoting law enforcement as a career.

**3. *The Commission's 2006 Strategic Plan said it was considering raising entry-level qualifications to become a peace officer. What is the status of that proposal? If it is done, how would the change affect recruitment?***

The Commission's 2006 Strategic Plan included three objectives related to entry-level peace officer qualifications: Study the feasibility of raising the entry-level education requirement above high school or GED; Study the feasibility of raising the entry-level reading and writing requirement; and Study the feasibility of requiring reading and writing testing for entry into the basic academy. Staff completed each objective by examining the feasibility and impact of each initiative, including seeking stakeholder feedback from local law enforcement agencies and academy training experts, and presented their findings to the Commission in 2006 and 2007. The Commission determined that raising entry-level education and reading/writing requirements would have a significantly negative impact on law enforcement recruitment and would exacerbate an already significant problem. Therefore, the Commission voted to delete these objectives without further action.

However, during the work on these objectives, POST staff received feedback from stakeholders that they would welcome the development of a voluntary pre-academy report writing course to better assess and improve recruits' writing skills before entering the basic academy. The Commission directed staff to explore this possibility and this effort is currently underway.

**4. *Are efforts underway to diversify law enforcement agencies? If so, please describe.***

As part of the POST Commission's efforts to assist law enforcement with their recruiting efforts, surveys with local law enforcement agencies regarding recruitment and retention were conducted in 2000, 2005, and 2007. Responses to these surveys indicated that the agencies were working to achieve diversity and that the need to do so still existed. Although POST is not involved in the actual hiring of local law enforcement officers, the Commission has taken several steps to assist agencies with their efforts.

In 2001, the POST Commission published a resource guide for local law enforcement agencies called *Peace Officer Recruitment and Retention: Best Practices – July 2001*, which contains several sections on best practices to improve diversity in the recruiting process. An update of this publication was published in 2006, which contains two entire chapters dedicated to improving diversity through recruitment.

In addition to the best practice publications, POST has maintained a longstanding partnership with the Museum of Tolerance to provide training for law enforcement officers, managers, and executives regarding bias, discrimination, and diversity. This training serves to help create bias-free workplaces and strong community relations, which, in turn, helps law enforcement agencies attract and retain employees of diverse cultures.

As local law enforcement agencies continue their efforts to diversify their workforces, the POST Commission will continue to seek ways to partner with law enforcement and subject matter experts to assist and support these efforts.

*The California Supreme Court last August ruled that POST must disclose the names, departments, hiring, and termination dates of California law enforcement officers.*

**5. What steps have you taken to comply with this ruling? What is the status of those efforts?**

The California State Supreme Court ruled that some information contained in the Peace Officer Database maintained by POST is public information and must be provided to the *Los Angeles Times* pursuant to a California Public Records Act (CPRA) request. After the California Supreme Court ruled that POST must disclose the information to the *Los Angeles Times*, attorneys for both parties discussed the scope of the information to be released and the process and timeline to do so. It was agreed that POST would submit the information during the first week in March 2008.

Because the Court decision allowed for some officer information to be withheld depending on the nature of their assignment, in January 2008, POST provided all local law enforcement agencies with a roster containing the names and pertinent information of officers on the list to be disclosed to the *Los Angeles Times*, along with information about how each agency could protect certain names from disclosure pursuant to the Court decision. By the end of February, over 535 agencies had completed this task.

During March 2008, POST provided the *Los Angeles Times* with the information required in the Court decision. The information consisted of the names, agencies, appointment and termination dates of all peace officers who were hired or left service from a law enforcement agency between January 1, 1995, and December 31, 2007, other than those withheld pursuant to the Court decision.

*SB 1234 (Kuehl), Chapter 700, Statutes of 2004, redefines the term "hate crime," expands the material that the Commission is required to include in its hate crime curriculum, requires the commission to develop and encourage all law enforcement agencies in the state to adopt a formal policy on hate crime law enforcement, with specified elements.*

**6. Please describe the Commission's progress toward meeting these requirements.**

The following are steps the POST Commission has taken to meet the requirements of SB 1234 and to assist local law enforcement agencies with the recognition and investigation of hate crimes:

- **Course Development:** POST created an eight-hour course that meets the requirements of SB 1234. The course is presented by the Simon Wiesenthal Museum of Tolerance in Los Angeles and Napa Valley College in Napa.



- **Telecourse Updates:** In 2002, POST developed a Hate Crimes Telecourse for local law enforcement officers. In 2006, the Telecourse was updated to meet requirements of SB 1234. The update was designed using subject matter experts in hate crime investigation and in collaboration with the Senate Office of Research.
- **Hate Crimes Policy Guidelines:** In January 2008, the POST Commission approved a new Hate Crimes Policy Guidelines publication. The guidelines provide a framework for the development or revision of state and local hate crimes policies that contain specified elements pursuant to SB 1234. State agencies are required to adopt a formal policy and the guidelines encourage local agencies to do so. POST staff is finalizing the publication, which will be distributed to all law enforcement agencies in mid-2008.
- **In-Service Training:** POST staff is currently working on a new scenario-based DVD Telecourse for the in-service training of law enforcement officers. The Telecourse is based on the new policy guidelines and included such topics as: The impact of hate crimes on at-risk populations; victim support services; hate crime response and investigation; working with the community to prevent hate crimes; developing hate crime training; mandatory reporting requirements; and ongoing agency responsibilities. The Telecourse is scheduled to be released in Fall 2008.
- **Basic Training Enhancement:** A portion of the new Telecourse will be provided to instructors who teach the Cultural Diversity/Discrimination learning domain in the basic law enforcement academies. The instructors will utilize at least two of the scenarios to facilitate training and discussion about hate crimes.

*The Commission's strategic goals state, "The costs associated with sub-par employee productivity, turnover, and counter-productive behavior are substantial, both from a monetary and public safety standpoint."*

**7. What steps have you taken to help departments weed out potentially sub-par employees before they are hired? What sort of training is available on this topic?**

Although hiring decisions regarding officers and dispatchers are made by the law enforcement agency rather than POST, the POST Commission performs a very important role in establishing the legal standards, guidelines, and regulations pertaining to the hiring and training of officers and dispatchers. Research-based selection and training standards assist agencies in hiring quality employees who will perform well in their work. The following are some of the steps POST has taken to help ensure employees are well qualified before they are hired:

- **Validated Selection Tests:** POST has developed and validated entry-level selection tests for officer and dispatch candidates that are used by law enforcement agencies as an initial screening tool. The tests directly relate to the skills necessary to be an effective officer or dispatcher and screen out those who do not possess these skills.

- **Validated Basic Course Tests:** POST has developed and maintains all of the written and performance tests utilized in the certified basic law enforcement academies throughout the State. These tests ensure law enforcement and dispatch recruits are obtaining the knowledge and skills specific to the job, and are able to demonstrate actual performance of these skills.
- **Selection Standards and Guidelines:** POST provides law enforcement agencies with written standards and guidelines for various portions of the required hiring process, including the background investigation process, interviews, and psychological and medical screenings. These guidelines are updated on a regular basis in collaboration with subject matter experts and based on verified research.
- **Training:** POST conducts training for background investigators and other professionals on how to conduct backgrounds investigations and associated screenings. Training is also provided to basic academy administrators and instructors on the proper administering of examinations and effective teaching techniques.

*One of your strategic goals is to develop a distance-learning plan for the delivery of Web-based training.*

**8. *What progress have you made toward this goal?***

In 1991, POST established its Learning Technology Resource Center (LTRC), which developed the first computer-based training programs for law enforcement personnel. This effort has evolved into today's POST Learning Portal, which delivers Internet-based training and information to many thousands of officers and dispatchers throughout the state. The Learning Portal contains on-line training courses, discussion boards, and resource information delivered free of charge to users and available anytime according to their schedules. Today, there are over 17,000 registered users of the Portal.

The following are some of the courses and resources currently available on the Portal:

- Learners First: Facilitation Skills for Learner-Centered Instruction Course
- Communication: Keeping Your Edge Course
- Law Enforcement Response to Terrorism Course
- Best Practices of Good Training Course
- First Aid/CPR
- Search Warrant Development Job Aid (in development)
- Audio broadcasts of presentations made during the 2006 Recruiters Workshop
- Various law enforcement and training publications
- PowerPoint presentations used in several training courses for peace officers and dispatchers
- Officer Safety Zone (in development): A page that assembles links to portal resources, courses, and on-line information related to officer safety

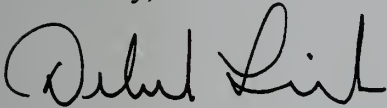


In 2008, POST is in the process of developing Learning Portal courses on Officer Safety, Identify Theft, and Environmental Crimes. POST staff is also interested in exploring the use of new technologies for the Portal, including natural language interaction, serious game design, modeling and simulation in a 3-D environment, and collective intelligence and community building through mass multi-user environments.

The delivery of web-based training remains a priority for the POST Commission and is reflected in the POST Strategic Plan and various Commission and administrative efforts.

Please feel free to contact me if you require any additional information, or have questions regarding my responses.

Sincerely,

A handwritten signature in black ink, appearing to read "Deborah E. Linden". The signature is fluid and cursive, with the first name "Deborah" and last name "Linden" clearly distinguishable.

Deborah E. Linden

The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that proper record-keeping is essential for the integrity of the financial system and for the ability to detect and prevent fraud.

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The fifth part of the document discusses the importance of transparency. It explains how transparency can help to build trust in the financial system and to prevent errors and fraud.



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8

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APPEARANCES

MEMBERS PRESENT

SENATOR DON PERATA, Chair

SENATOR JIM BATTIN, Vice Chair

SENATOR GIL CEDILLO

SENATOR ROBERT DUTTON

SENATOR ALEX PADILLA

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Appointments Consultant

BILL BAILEY, Consultant to SENATOR BATTIN

DAN SAVAGE, Consultant to SENATOR CEDILLO

CHRIS BURNS, Consultant to SENATOR DUTTON

BILL MABIE, Consultant to SENATOR PADILLA

ALSO PRESENT

SUZAN L. HUBBARD, Director  
Division of Adult Institutions  
Department of Corrections and Rehabilitation

DAVID L. RUNNELS, Undersecretary  
Department of Corrections and Rehabilitation

DAVID WARREN  
Taxpayers for Improving Public Safety

DARLENE ESTES-DANGERFIELD, President  
Association of Black Correctional Workers

RICHARD TATUM, State President  
California Correctional Supervisors Organization

CRAIG BROWN  
CCPOA



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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN PERATA: We have two appointees appearing today, Suzan Hubbard and David Runnels.

I'd have you both come up at the same time, if you'd like.

I'm a little concerned that the Rabbi's here to support both of you. I don't believe we've had that happen before.

MR. WARREN [FROM THE AUDIENCE]: That could be a bad omen.

[Laughter.]

CHAIRMAN PERATA: Your words.

I would first ask you to introduce yourselves and then any family you might have here.

MS. HUBBARD: Good afternoon, Senators. Suzan Hubbard.

I'd like to introduce my husband, Mel Hamilton. Thank you.

CHAIRMAN PERATA: You probably want to sit right in front there.

[Laughter.]

MR. RUNNELS: My name is David Runnels, and I would like to introduce my wife, Michelle Runnels; my sister Terri Runnels, and my brother-in-law Bruce Pinole. I guess Terri's last name is Pinole wow, too.

CHAIRMAN PERATA: Suzan, would you like to open?

MS. HUBBARD: Thank you. Good afternoon.

1 I have a Bachelor's Degree in Social Welfare from  
2 the University of California at Berkeley, and almost 29 years of  
3 working with the California Department of Corrections and  
4 Rehabilitation.

5 I began my career as a correctional officer at  
6 San Quentin State Prison, working through the ranks, and have  
7 served as the warden at six prisons, the Southern Regional  
8 Administrator, the Assistant Deputy Director, the Associate  
9 Director for High Security and Transitional Housing, and as the  
10 Deputy Director all within Adult Institutions.

11 My professional experience, I believe, will serve  
12 me well in managing the complex prison system. I fully  
13 appreciate the magnitude of the responsibility vested in me as  
14 the Director.

15 I recognize the opportunity I have to be an  
16 integral part of the CDCR's shift back to a model that  
17 facilitates offender change.

18 I welcome any questions you may have.

19 CHAIRMAN PERATA: Thank you.

20 MR. RUNNELS: Mr. Chair, Members of the Senate  
21 Rules, it is my sincere privilege to have the opportunity to  
22 appear here today for the consideration of my confirmation to  
23 the position of Undersecretary, Operations, for the California  
24 Department of Corrections and Rehabilitation.

25 I began my service in the State of California as  
26 a correctional officer at Deuel Vocational Institution in 1982.  
27 I promoted to sergeant and lieutenant at the California State  
28 Prison, Solano, and also served as an employee relations



1 officer, correctional business manager, correctional captain,  
2 and a Correctional Business Manager II.

3 After ten years of service at Solano, I  
4 transferred to High Desert State Prison, where I served as  
5 Associate Warden, Chief Deputy Warden, and Warden. After almost  
6 nine years of service at High Desert State Prison, I transferred  
7 to Headquarters to serve in the capacity of Deputy Director, and  
8 then as Chief Deputy Secretary, Adult Operations.

9 For the past six months, I have served as  
10 Undersecretary Operations with the most dedicated, hard working  
11 employees of any department, staff who take the necessary  
12 actions to keep our institutions and communities safer, while  
13 overcoming many challenges to achieve a mutual goal of public  
14 safety.

15 I'm willing to answer any questions that you have  
16 for me right now.

17 CHAIRMAN PERATA: I also want to congratulate you  
18 that you got a son out of Chico State in seven years. That may  
19 be a new record.

20 [Laughter.]

21 MR. RUNNELS: Yes, I did.

22 CHAIRMAN PERATA: Since you both have come up  
23 through the ranks, and have probably seen and participated in  
24 almost everything, this system for years seems to have been top  
25 heavy to the corrections side, a little lighter on the rehab.  
26 Now we've put rehab on the marquee.

27 How do you inculcate within your staff or within  
28 the institution the importance of rehab?

1 MS. HUBBARD: I think that the wardens that I'm  
2 responsible for, and the other associate directors, at the point  
3 that we started in our career, rehabilitation was very much a  
4 part of incarceration. And that, over the years whether it was  
5 overcrowding or budget cuts, became less a part of our keeping  
6 the offenders incarcerated.

7 So, as we changed our name in 2005 and truly put  
8 a more emphasis into returning the offenders safely with some  
9 skills, whether it be education, vocational, or some drug  
10 treatment, the staff at the prisons have welcomed that. They  
11 know that that helps run a safe prison to have offenders  
12 meaningfully involved in something, and certainly safer  
13 communities.

14 We've begun to make some progress in reducing our  
15 population, which gives us a bit more space to offer treatment,  
16 or vocational or educational programs. We're starting to see  
17 some real things that can be done in our prisons through the "R"  
18 in our name to make them safer. So, we welcome it.

19 CHAIRMAN PERATA: Do you have any problems?

20 MR. RUNNELS: The only thing I would add is, I  
21 concur with everything Suzan said, but I would also say that  
22 because of the expansion of the prison system over the last 25  
23 years, that since my return to Headquarters as the  
24 Undersecretary and Suzan as the Director, we've also started a  
25 focused approach at the institutions, what we call Back to  
26 Basics. And that we're focusing on looking at the institutions  
27 and rebuilding the culture in the institutions to more of a  
28 rehabilitative model than what maybe it was in the last 20

1 years.

2 CHAIRMAN PERATA: Gangs. We hear lots about  
3 them.

4 MR. RUNNELS: Gangs are problematic in the prison  
5 system.

6 Another thing we've done here recently since I  
7 became the Undersecretary and Suzan became the Director is,  
8 we've taken a focused approach regarding gang violence in our  
9 institutions.

10 One of the first things we did is, we basically  
11 assessed all 33 of our institutions. We overlaid by facility  
12 within each institution how many modified days of lockdowns they  
13 had, and what was the reason. Was it Southern Hispanic?  
14 Mexican Mafia? What was driving that lockdown?

15 In addition, we overlaid all the program  
16 resources that we have employed at each of our institutions, and  
17 then we sent basically a schedule. We started at California  
18 State Prison, Solano in February of this year. We went in with  
19 highly trained gang investigators. We targeted specific gang  
20 leaders and their soldiers within the institution. We validated  
21 them, moved them out of the GP. Went back to the institution  
22 and started basically going back to basics, talking to staff  
23 about the importance of being able to be proactive to violence,  
24 not reactive.

25 If you look over the last 20 years, as a  
26 department we've become very reactive to, not necessarily  
27 proactive. What I mean by proactive, we have to communicate  
28 with our population, because our population is our community.

1 If we don't know them, we can't police them.

2 So, part of that targeting, we've left Solano.  
3 We're still there working on Back to Basics, and rolling out  
4 some program reforms, some incentives and disincentives  
5 associated with programing. We're also now at California --  
6 Chuckawalla Valley State Prison and Ironwood State Prison doing  
7 the same operation. Once we're completed there, we're basically  
8 going to roll out, prison by prison, to all 33 prisons and take  
9 them back, basically, one at a time.

10 In addition, we actually assembled a national  
11 gang panel of experts on gangs. They've released a report to  
12 the department. We're currently evaluating that report and  
13 rewriting our regs to take a more behavioral approach to gang  
14 activity within our correctional system.

15 CHAIRMAN PERATA: Is this more family that just  
16 came in?

17 [Laughter.]

18 MR. RUNNELS: Yes, we consider them family  
19 now.

20 MS. HUBBARD: That's our work family.

21 Besides what Dave has described, looking at the  
22 individual gang behavior within our prisons, both in terms of  
23 training our staff, whether at the academy or refreshing their  
24 training with new information at the prisons, very much partner  
25 between the adult institutions and the Office of Correctional  
26 Safety. We hold gang task force meetings in which we reach out  
27 to state, and federal, and community law enforcement to exchange  
28 information. And that is very well received and very necessary



1 within our prison environment.

2 CHAIRMAN PERATA: I'd like to know what's the  
3 philosophy that you have, I guess it'd be management philosophy,  
4 of the relationship between -- for want of a better phrase --  
5 management/rank and file?

6 Candidly, I don't think that there's been a worse  
7 labor relations condition I've seen than there is in the  
8 corrections system right now. And I also, from an outsider's  
9 point of view, it does not appear to me that, given the nature  
10 of the work, you could ever run those prisons without the guys  
11 that walk the toughest beat in America, or whatever it is.

12 You know, a lot of this is not of your doing. I  
13 know that. In fact, I would go so far as saying you're probably  
14 where it could be mitigated, because a lot of this is done way  
15 above you. I don't want to have you say things that never get  
16 you to the Floor.

17 Of course, if somebody screws around with you,  
18 I'll get you there fast.

19 [Laughter.]

20 CHAIRMAN PERATA: So, just what you think.

21 MS. HUBBARD: Thank you.

22 You know, as I've said, I've long worked in  
23 prison, so there's -- I've recently come from being a warden at  
24 the California Medical Facility. And there wasn't a time for  
25 any decision I made that I didn't look at the impact to either  
26 the offenders or the staff that worked there.

27 And I really believe from that time that I most  
28 recently spent in the prison, and what is going on in most of

1 our prisons is a very viable working relationship between  
2 members of various bargaining units and management staff. We  
3 have to, at that operational level, keep our eye on the safety  
4 for our staff and offenders, and public safety.

5 So, while in different hallways in Sacramento  
6 there may be high level discussions and disagreement, at that  
7 operational level for the most part, everyday we are focused on  
8 safety, public safety.

9 MR. RUNNELS: I would concur with what Suzan  
10 said, but add that it's extremely important that we have a  
11 good -- open lines of communication with all bargaining units  
12 that represent our employees because they are, in fact, our  
13 employees.

14 I personally, when I served as a warden at High  
15 Desert State Prison, didn't always agree with my various chapter  
16 presidents, but we did have an open line of communication, and  
17 we were able to agree to disagree at times.

18 I think it's important, because they do represent  
19 our employees, but I think it's -- it's all the various  
20 bargaining units. And that open line of communication has to  
21 remain open, and that it's a two-party street.

22 CHAIRMAN PERATA: Something came up that came to  
23 my attention. There was the Sick Leave Memorandum, which I  
24 notice was signed by the outgoing Secretary.

25 Are you familiar with that policy?

26 MS. HUBBARD: Yes.

27 MR. RUNNELS: Yes, we are.

28 CHAIRMAN PERATA: Not for nothing, but if I were

1 managing people, I wouldn't do something like this because it  
2 seems to have had a hostile tinge to it, unless there was a huge  
3 problem, and I think I probably could explore that some other  
4 way.

5 So, it's those kinds of things, the little  
6 things, that sooner or later makes it snap.

7 I was a public employee for awhile, had a real  
8 job. I was teaching. We had so many sick days. And, you know,  
9 you'd burn a lot of them with what they call "mental health  
10 holidays," drooling in the mirror, and you figure, "I've got to  
11 take the day off."

12 When people take Fridays off, they take Mondays  
13 off, they're book-ending the weekend, and they're doing that  
14 like on a consistent basis, I can see that.

15 But that kind of a thing, labor-management  
16 relations in my experience starts with the little things. If  
17 you're good on the little things, you're going to be good on the  
18 bigger things.

19 I'm not even sure I want to have a comment, but  
20 if you want to, make a comment.

21 MR. RUNNELS: I would concur with your comments.

22 CHAIRMAN PERATA: That's a good comment.

23 [Laughter.]

24 MR. RUNNELS: I believe that the sick leave piece  
25 was one of the last pieces of the last-best-final that was being  
26 implemented.

27 Do I agree that the timing was difficult? I  
28 don't believe it was staged. As a matter of fact, I know it

1 wasn't staged. I think it was just one of those things that  
2 happened. I think that Mr. Tilton signed it on his way out of  
3 office. It was something that had been in the works since the  
4 last-best-final was served on the union.

5 It truly brings the language in line with the  
6 other bargaining unit contracts with the State of California.  
7 It is not intended to treat the Unit 6 employees any differently  
8 than we treat other state employees. And it still safeguards  
9 the protective leaves, such as Family Medical Leave Act, Family  
10 Crisis Act, and those type of leaves it doesn't affect. It just  
11 allows the department to basically manage Unit 6 employees as we  
12 manage other employees.

13 SENATOR CEDILLO: How so?

14 I'm concerned that when you say previously the  
15 department was unable to take any type of corrective or  
16 disciplinary action based solely on the amount or frequency of  
17 use of sick leave, now this prohibition has been removed. In  
18 other words, now you can take corrective or disciplinary action  
19 based solely on the amount or frequency of use of sick leave.

20 And you say that this is, however, consistent  
21 with Family Leave Act. Make me understand that.

22 MR. RUNNELS: If somebody qualifies for the  
23 Federal Family Medical Leave Act, which is a federal act, then  
24 that's a protected leave which we cannot discipline or take  
25 corrective action on an employee. It's a guaranteed privileged  
26 right, same as Family Crisis Leave.

27 But prior to the new sick leave policy going out,  
28 if somebody decided to work swaps every Thursday and Friday, and



1 called in sick every Wednesday, absent any other reason --

2 SENATOR CEDILLO: Excuse me. The vernacular:  
3 swap?

4 MR. RUNNELS: Swap is a shift swap where people  
5 exchange shifts. So, somebody works for me. I would work for  
6 Suzan; she would work for me. So, I would have a longer weekend  
7 and/or get a day off without having to burn a vacation time or a  
8 holiday credit.

9 SENATOR CEDILLO: Who approves those swaps?

10 MR. RUNNELS: Supervisor has to approve it.

11 SENATOR CEDILLO: So, these are approved  
12 exchanges of work shifts?

13 MR. RUNNELS: Correct.

14 SENATOR CEDILLO: So that's behavior that then is  
15 sanctioned and would not be --

16 MR. RUNNELS: Correct.

17 SENATOR CEDILLO: -- would not be penalized.

18 MR. RUNNELS: Correct. But if somebody --

19 SENATOR CEDILLO: So, if someone's engaged in  
20 sanctioned behavior, let's go forward from there.

21 MR. RUNNELS: If somebody calls in sick, say,  
22 every Friday, in prior contract language simply on the fact that  
23 they called in sick on every Friday, the department could not  
24 review and/or take action unless there was other -- some kind of  
25 substance, such as the employee previously requested the time  
26 off and was denied by a supervisor. But if that day off falled  
27 [sic] on a holiday such as Christmas, Thanksgiving, and I want  
28 to say New Years --

1 SENATOR CEDILLO: Yes. Thanksgiving, Christmas  
2 or New Years.

3 MR. RUNNELS: And the amount of time -- if  
4 somebody used 400 hours, the department wasn't allowed to look  
5 at that, review that, just based on the fact of frequency or the  
6 amount of hours used.

7 SENATOR CEDILLO: Right.

8 MR. RUNNELS: This allows us to look at it, but  
9 it doesn't require that we take an action.

10 And in the roll out that Suzan's doing for the  
11 institutions, we have --

12 SENATOR CEDILLO: It says that you can take an  
13 action, or that you will take an action.

14 MR. RUNNELS: No. It says that you can review  
15 it. It doesn't require that you take an action.

16 SENATOR CEDILLO: It doesn't require it, but it's  
17 permissive.

18 In other words, in the past you were unable to  
19 take an action.

20 MR. RUNNELS: Correct.

21 SENATOR CEDILLO: And today, now you're saying  
22 it's permissive to do that.

23 MR. RUNNELS: If the situation, the totality of  
24 the situation warranted it, yes.

25 MS. HUBBARD: Senator, I thought it was important  
26 enough, while that's a very high level memo rolled out, that  
27 within our Division of Adult Institutions, we had a conference  
28 call in which I laid out some expectations before we would even

1 begin to take any sort of corrective action.

2 Part of that is for us to re-educate and ensure  
3 that our supervisors are very aware of the complexities of  
4 protected leave. Both California and federal leave is very  
5 complex. There's many things in which we should not hold sick  
6 leave against someone if they have protected leave.

7 So, part of what I met with the wardens  
8 telephonically about was that we were going to ensure that we  
9 are educating in a very effective way our supervisors about  
10 protected leave.

11 We are not going to take any corrective or  
12 adverse personnel action until that training is done. We are  
13 going to start by looking at our managers, supervisors, and rank  
14 and file sick leave usage, to look at how much use we have at  
15 each of our prisons to do an analysis. So, in this first month  
16 of June, that's the work that we'll be doing.

17 And you can imagine with a system -- prison  
18 system that I'm responsible for, as large as it is, to affect  
19 that training will take some time, but it will be very  
20 meaningful. We are not just starting on June 1st living just to  
21 that -- effect of that memo. We have to operationalize that.

22 SENATOR CEDILLO: I understand that, but I have  
23 to tell you that, echoing the comments of the Pro Tem, I don't  
24 have to tell you, as you indicated, the importance of the  
25 relationship between the bargaining unit and yourself.

26 And this, I could not think of a union leader, a  
27 representative, or an employee who would not find this provision  
28 to be -- it's clearly a take-away. I don't know what was

1 bargained in exchange for. I would consider it offensive and  
2 hostile, and do not consider this as a step towards any  
3 increased employee morale or better work relationship between  
4 your management staff and your base employees.

5 It's clearly, on its face, a take-away.

6 I don't know. You talk about a MOU agreement,  
7 but unless there's been a bargained for exchange, this is a  
8 take-away from previous status quo relationship.

9 I don't know how you could see this as anything  
10 other than a hostile act and regressive bargaining on behalf of  
11 the state as the employer.

12 Since we are affiliated with the state, we as  
13 Democrats do not approve of that type of regressive bargaining.

14 CHAIRMAN PERATA: You didn't bargain it.

15 MR. RUNNELS: No.

16 CHAIRMAN PERATA: The point is, just don't  
17 enforce it.

18 SENATOR PADILLA: Well, I want to rehash this  
19 particular issue. It was brought to my attention, did cause  
20 concern, but I think two colleagues have done a good job of  
21 making the point.

22 So, we're hearing that it will or it won't be  
23 implemented, this particular policy? How would you suggest the  
24 department move forward on this specific concern?

25 MS. HUBBARD: It's not to say that it's not going  
26 to be implemented, but the steps to operationalize that within  
27 33 prisons that I'm responsible for, there's a great deal of  
28 work to be done before we could implement what's written in that



1 high level memo, such as the training, evaluating leave usage  
2 that's not protected leave, the other things that I mentioned.  
3 So, that's a great deal of work to be done within our large  
4 prison system.

5 But I expect it will be 90 days to do that amount  
6 of work before we're even to a point to analyze those days used  
7 by staff that may have been in violation of policy that's  
8 written, that you have in front of you.

9 SENATOR PADILLA: While I appreciate the fact  
10 that there's still a lot of work to be done before you can  
11 implement this, but that doesn't give me a comfort level that  
12 we're not moving in this direction.

13 I mean, I think it's pretty clear, and I'm  
14 looking at the same memo here in front of me, moving from,

15 "... the Department was unable  
16 to take any type of corrective or  
17 disciplinary action ..."

18 When that is no longer the case, as Senator Cedillo said, the  
19 department is able to take corrective or disciplinary action  
20 based solely on the amount of, et cetera, et cetera, et cetera.

21 That is problematic because when it's based  
22 solely on the frequency and the number, we're not assessing the  
23 true cause.

24 MS. HUBBARD: Part of that roll out, Senator, is  
25 once we have identified those staff that have used sick leave,  
26 and we have taken away any protected leave, is to start with an  
27 interview with a captain, at the captain's level, interviewing,  
28 interacting with the employee to see what any cause of that sick

1 leave may be. Because there may be staff --

2 SENATOR PADILLA: So, the way you describe that  
3 then, it's no longer just based solely on the number and the  
4 frequency, in which case we ought to be doing away with this  
5 language.

6 I think that's our point today.

7 MS. HUBBARD: Right.

8 SENATOR PADILLA: Any response?

9 CHAIRMAN PERATA: That last one you did with me  
10 was good.

11 [Laughter.]

12 MR. RUNNELS: It's a point well taken, sir.

13 SENATOR PADILLA: That wasn't the same one.

14 CHAIRMAN PERATA: Variation on a theme.

15 [Laughter.]

16 MR. RUNNELS: I couldn't remember that fast on my  
17 feet, I apologize.

18 I think the important thing is that the  
19 department move slowly in looking at it. And that I think it's  
20 important that we look at employee leave usage, because a lot of  
21 times in my experiences, coming up through the ranks, when you  
22 actually talk to employees, set them down and talk to them about  
23 their sick leave abuse, you'll find out that there's another  
24 driver, and that we can provide resources to the employee to  
25 help them out.

26 Many times when I talked to employees about their  
27 sick leave, I found out they were recently through a divorce,  
28 single parent couldn't get child care and therefore a reasonable

1 accommodation was something.

2 So, it's not totally to look at the employee for  
3 adverse or to discipline. It's more to look at what is the  
4 problem, and whether there's -- there's things we can do to help  
5 the employee.

6 There is going to be a certain percentage of  
7 employees, not only Unit 6 but all other bargaining units, that  
8 ultimately are abusers of the process, and the process has to go  
9 forward.

10 SENATOR PADILLA: But again, that information  
11 becomes available once there's some sort of interview or  
12 research conducted.

13 MR. RUNNELS: Correct.

14 SENATOR PADILLA: When it's not solely based on  
15 the number and frequency --

16 MR. RUNNELS: Correct, I would agree.

17 SENATOR PADILLA: -- number of absences, in which  
18 case again, this language I think is not necessary.

19 SENATOR CEDILLO: It's unnecessary.

20 SENATOR PADILLA: That's point number one.

21 Point number two, looking at the specific  
22 language in the Family Leave Act,

23 "No employer shall deny an  
24 employee the right to sick leave,  
25 or discharge, threaten to  
26 discharge, demote, suspend, or in  
27 any manner discriminate against  
28 an employee for using ..."

1 The word "discipline" isn't in there.

2 So, while the department may be compliant with  
3 the Family Leave Act for not discharging, threatening to  
4 discharge, there's other types of discipline that may be  
5 possible. It complies with the Family Leave Act, but then the  
6 employee, department employee could still be subject to another  
7 type of discipline.

8 It's leaving the door open to that that causes  
9 concern. That's why this Committee's making such a strong point  
10 of it.

11 CHAIRMAN PERATA: I think what you can take away  
12 from it today is that if you ever run into anybody downstairs,  
13 you tell them that you had a hell of a time with this issue,  
14 and that the Democrats here didn't get it. We're a little  
15 slower than our Republican colleagues.

16 I know it's not your province, but it does  
17 certainly affect the way you manage.

18 SENATOR PADILLA: The other issue I'd ask about,  
19 since we are talking about operations today, is the  
20 proliferation of cell phones and other wireless communication  
21 devices in our prisons. I think this is something that at staff  
22 level you are informed of, as well as the questionnaire.

23 I'd love to get your comments on the record  
24 today.

25 MR. RUNNELS: Basically, when I first came back  
26 as the Undersecretary, one of the things I looked at, we set up  
27 a wardens' advisory group to look at contraband interdiction  
28 into the institutions, and specifically the problem with cell



1 phones.

2 The wardens' advisory group also had a Juvenile  
3 Justice representative, contract facility management  
4 representative. And what they look at is, how can the  
5 department go forward and look at the best strategy to deal with  
6 this?

7 We ran a pilot at CSP Sacramento, which was fixed  
8 sensors that they had in a building, that if a cell phone  
9 activated, the sensors were supposed to pick up and tell us  
10 where the cell phone was. It was kind of problematic. It was  
11 extremely expensive, and it didn't work that well. It would  
12 have cost us in excess of almost \$2 million per prison to  
13 install it.

14 Pelican Bay State Prison ran a pilot where they  
15 purchased some wands, and you'd actually have to walk the tier  
16 and kind of wand the tier to try and find out if a cell phone  
17 was active.

18 What the wardens' advisory group found was that  
19 neither one of those were actually the best source or the best  
20 action for the department to take, and that we should not try to  
21 be detecting cell phones once they're in the secure perimeter.  
22 We should be trying to keep them from coming in, as with any  
23 other contraband.

24 What they came up with was a three-pronged  
25 approach. One is to standardize what property we allow in and  
26 out of our institution.

27 Standardize the mechanism for searching anybody  
28 that comes in and out of prison, which is, you know, problematic

1 in that we're talking about searching staff, or having some kind  
2 of a screening process with our staff.

3 And three, looking at technology that we can  
4 implement because a simple metal detector will not pick up any  
5 cell phone that walks through it. But there is technology that  
6 is out there now that is specific for cell phones that you can  
7 purchase, you can install. And we're looking at California  
8 State Prison Solano, which tends to be our highest institution  
9 with cell phone interdiction, as a pilot.

10 In addition, we have the Office of Correctional  
11 Safety and the Office of Internal Affairs that are conducting an  
12 investigation that I really, you know, can't speak about  
13 publicly, associated with all the cell phones that we've found  
14 in the system, and specifically California State Prison Solano.

15 SENATOR PADILLA: I appreciate your recognizing  
16 that some detectors do, some detectors don't detect cell phones.  
17 The ones that we walk through at the air port at least twice a  
18 week certainly do.

19 MR. RUNNELS: Correct. Those are scanners.

20 SENATOR PADILLA: I think we also have an  
21 opportunity before us with a significant investment that the  
22 state is either choosing towards being mandated to invest in its  
23 facilities because of our overcrowded situation, whether it's an  
24 upgrade of existing facilities or the construction of new  
25 facilities, there's literally billions of dollars on the table.  
26 Some of that, I would imagine, ought to be utilized to increase  
27 safety and security not just of inmates but of staff and  
28 visitors.

1 MR. RUNNELS: I agree.

2 SENATOR PADILLA: I heard an "I agree" there.

3 Thank you.

4 SENATOR DUTTON: Just a couple of questions.

5 I will make just one general statement. I would  
6 concur with the concern that's been expressed now, that we've  
7 got a big job here to do with our prison system. We've kind of  
8 got to get everybody on the same page. So, anything that we can  
9 do to expedite some of the tension between management and the  
10 guards would be appreciated by all of us, particularly me as  
11 well as my colleagues here.

12 I do want to talk to you a little bit about one  
13 of the concerns, obviously, we have as we're going down this  
14 path to try to come up with programs to help inmates once  
15 they've fulfilled their obligation to society, is to  
16 successfully be able to release them back into society to become  
17 productive.

18 One of the areas that we need to take a look at  
19 is parolee risk assessment. I understand we have a new matrix  
20 that's currently in place.

21 Could you share with us how that was developed,  
22 and what's it kind of looking like?

23 MR. RUNNELS: The department, in collaboration  
24 with U.C. Irvine, took an instrument which is referred to as  
25 COMPAS. And COMPAS has basically 33 static factors, and 108  
26 dynamic factors. And the static factors are based on static  
27 factors that you find in the central files, such as arrests,  
28 history of marriage, military service, static type things that

1 traditionally don't change.

2 And then we do an interview where we come up with  
3 108 dynamic factors that basically tell us what the risk to  
4 reoffend is, and what the criminetic [sic] needs of the offender  
5 are, which is, you would get whether they're high risk to  
6 reoffend, medium risk, or low risk. And specifically, what a  
7 menu of services that are needed by the offender to help them  
8 basically reentry back to society without reoffending.

9 SENATOR DUTTON: Okay, I understand there's been  
10 a sampling now. What's been the success with this?

11 MR. RUNNELS: The department's Office of  
12 Research, with U.C. Irvine, I want to say the 2003 or 2002 took  
13 a thousand parolees, took the risk model, applied it to them to  
14 test its -- they call it the Accurate Under the Curve. I'm not  
15 a researcher.

16 But it tested to be of among national standard,  
17 which is .70 or above, for accuracy.

18 SENATOR DUTTON: Any preliminary indication on  
19 how we're stacking up at this point? Has it been put into tests  
20 so far? I mean, I understand we've taken a look at some of our  
21 more recent cases that parolees been let out.

22 MR. RUNNELS: We actually have not employed this  
23 model to the field at this point.

24 SENATOR DUTTON: And when do you think we'll be  
25 looking at doing that?

26 MR. RUNNELS: We were prepared to do it during  
27 this month of May. We pulled that back. We were actually  
28 noticing the union to negotiate the impact of the implementation



1 of the term. We actually pulled that back as a result of the  
2 settlement conversations going on with the three-judge panel and  
3 the impact that may have on the total.

4 SENATOR DUTTON: Okay.

5 The other area I'd like to get some information  
6 on would be with regards to Jessica's Law, and the requirement  
7 for GPS monitoring of sex offenders under Jessica's Law.

8 I'd just like to know how the implementation of  
9 the requirement's going on, and what's the status on that?

10 MR. RUNNELS: Our Parole Division is ahead of  
11 schedule. After the passage of Jessica's Law, we provided a  
12 budget package that had a scheduled roll out of GPS activation  
13 by June of '08. We were supposed to have all the high risk sex  
14 offenders strapped with what we consider active GPS. That was  
15 actually completed early, I want to say like 30 or 45 days ago.

16 As far as the passive units, which are the  
17 nonhigh risk sex offenders, we have until June of '09, and we  
18 are ahead of schedule with that implementation at this time.

19 SENATOR DUTTON: Great.

20 Then my final question has to do with vacancies  
21 within the department itself. There's been a lot of talk in the  
22 last couple of years on trying to get the academies back up and  
23 running, and so forth, and getting recruitment of guards.

24 Give us an update as to where we are with that.

25 MS. HUBBARD: We've made very good progress in  
26 our recruitment and would really consider only a few prisons to  
27 still have needs in terms of true vacancies: Pelican Bay, High  
28 Desert, CTF and Salinas Valley.

1                   And our academies are focusing on hiring staff  
2 that are going to those prisons. So, we've made tremendous  
3 efforts towards filling our vacancies.

4                   SENATOR DUTTON: AB 900 is going to require us,  
5 as more prisons are coming on line, there'll be some more  
6 facilities.

7                   What kind of plan is currently in place to make  
8 sure that we continue on with the program so that we don't have  
9 a huge vacancy factor again?

10                  MR. RUNNELS: We actually meet monthly, the  
11 Division of Adult Institutions, Division of Juvenile Justice,  
12 our personnel department and our academy staff. And we're  
13 basically tracking our current vacancies by institution. How  
14 the DJJ closures of Dewitt and El Paso have affected what staff  
15 we have to accommodate on the adult side, in addition to what  
16 the receiver's construction needs would be associated with their  
17 roll out of the first 4500 beds.

18                  In addition to, you know, tracking the budget  
19 process, and whether anything comes through the budget process  
20 or through the three-judge panel settlement, because the last  
21 thing we want to do is continue to hire when we're actually -- I  
22 think in '06-'07, we had 4,000 vacancies. And currently right  
23 now, at all but those four or five institutions, we actually  
24 have surplus staff.

25                  We also don't want to over-hire and basically  
26 have to lay people off directly out of the academy.

27                  So, we're basically budgeted -- balancing, excuse  
28 me -- and watching what's going on with the dynamics of the

1 budget, with the three-judge panel, and what's going on with the  
2 population on the juvenile side of the house.

3 SENATOR DUTTON: Then a final question is a  
4 little bit about education and how we're doing. I read  
5 someplace that the LAO had reported back in July, we had 17  
6 percent vocational instructor positions were still vacant.

7 Are we making any progress in that area?

8 MS. HUBBARD: I would say we are making some  
9 progress. We've done a couple of things recently.

10 Changed our school schedule so that we have a  
11 more traditional schedule, in line what you might see in the  
12 public, with traditional summers off. And had significant  
13 increases in salaries for both our vocational and our academic  
14 instructors, which has assisted greatly in our recruitment and  
15 retention of our staff.

16 SENATOR DUTTON: Thank you.

17 SENATOR BATTIN: I have kind of an obscure  
18 question, but it keeps getting brought up to our office.

19 According to every 15 minutes on cable TV, we're  
20 changing from analog to digital next year. Everyone's telling  
21 us that watch the ads that your set's not going to work.

22 We hear from actually several people from the  
23 prisons that there's not really any plan going forward to change  
24 that. And a lot of the correctional officers are worried that  
25 next year, there's suddenly going to be televisions that don't  
26 work all across the prisons, and that they're going to have a  
27 lot of very upset inmates, and they don't want to deal with  
28 those issues.

1 Can you tell my what you're doing along those  
2 lines?

3 MS. HUBBARD: I'd be glad to.

4 As you can imagine, at our 33 prisons, and then  
5 in our community correctional facilities, there are a variety of  
6 ages, and they have a variety of -- whether it's antenna or  
7 satellite.

8 So, we are completing an assessment of each  
9 prison to determine for those prisons that provide some sort of  
10 I'll say antenna or a satellite system for the inmate's  
11 individual TV, what type of a master converter, whether it's  
12 building a prison that would be needed. So, that's complex.

13 We've already identified funds through our Inmate  
14 Welfare Fund to fund any converters that are needed.

15 The challenge is that many of our prisons,  
16 whether it's in some of our older dormitories or even some of  
17 our newer dormitories, the inmates have been allowed to have  
18 TVs, but they are not truly hooked up to any antenna system.  
19 They may have rabbit ears. And for that type of system, as that  
20 changes, as that signal changes, they will no longer be able to  
21 receive a signal.

22 So, that's the second part of our challenge, to  
23 look at the whether an individual converter box by television or  
24 allowing a new TV in, both whether our electrical systems could  
25 take it, and whether it would be effective for those offenders  
26 that are not hooked up to our -- some sort of a cable system  
27 within our prisons right now.

28 SENATOR BATTIN: I just have one other point.



1 I listened to Senator Cedillo and Senator  
2 Padilla, and I have to agree with them on their concerns about  
3 the memo.

4 But it's more of a larger issue. What Senator  
5 Perata had said, I agree wholeheartedly. I've never seen such  
6 cantankerous, adversarial relationships between staff and  
7 management as I have in Corrections.

8 I just spent an hour, or actually, gees, we spent  
9 almost two hours today in our Caucus discussing nothing but the  
10 prison system, and what we're going to do with the challenges  
11 that face us with the courts and the receiver.

12 It all comes down to the fact that I don't  
13 believe that you're working hand-in-hand with your staff. As a  
14 matter of fact, I know you're not.

15 And it's very frustrating for us to see that and  
16 deal with it. And from where I live, and I live in the  
17 Coachella Valley, and I have four prisons very close to me.  
18 Because of that, that means my kids grew up playing soccer with  
19 the correctional officers' children, and they were our coaches,  
20 and I got to know these people as real human beings and saw that  
21 they had real problems, and the pressures that are on them.

22 It really bothered me a few years ago, I guess it  
23 was a couple years ago, when the Governor at the State of the  
24 State Address called out the officers, basically accusing them  
25 of playing gladiator games. That does not bode well for a  
26 working relationship.

27 We've got men and women that are in harm's way  
28 every single day. And to have not only the pressures of that,

1 but to have the financial pressures that they're under, and then  
2 the management pressures that they feel, they kind of feel like  
3 they've got the whole world against them.

4 I want to know from you how are you going to do  
5 your part to fix this, because it's a big problem? And we can  
6 talk about it, and I talk about it a lot to the officers, and I  
7 talk about it with the association. And I've talked to some  
8 wardens that I've known over the years.

9 I'm just not seeing any positive movement. As a  
10 matter of fact, I'm seeing it go the other way right now.

11 And I want to know how we're going to bring that  
12 trust back? I don't believe there's any right now.

13 MR. RUNNELS: I would agree that the situation's  
14 very problematic.

15 I think what I can do as the Undersecretary of  
16 Operations, recently CCPOA has sunshined with DPA to come back  
17 to the table. I think it's very important that I place somebody  
18 from the Operations side on that negotiation table at a high  
19 enough level that we can actually get to some honest discussion  
20 related to operational issues within the department.

21 I think, though, to be very honest, it's going to  
22 be a problematic situation this year with any negotiation,  
23 whether it's Unit 6 or the various other bargaining units, based  
24 on the budget situation that's going on, you know, in the State  
25 of California.

26 But I think what we can do is to try and have  
27 honest discussions and reach middle ground on things that are  
28 common, because I think there are going to be some things that are

1 going to be very difficult to get to.

2 MS. HUBBARD: Being the Director for the Adult  
3 Institutions, it's my responsibility, whether it's to identify a  
4 high level manager and to be in constant communication with them  
5 as they are sitting at any of our tables, so that I can reflect  
6 through wardens and other staff at the prisons what are the  
7 issues, whether it's the issues with contractual language or  
8 operational issues that we can put on the table to come to  
9 better operational understanding and working relationship.

10 MR. RUNNELS: If I might add, I think it's also  
11 important to keep an open-door policy and a line of  
12 communication.

13 I do call Chuck Alexander, and I do speak to him  
14 on issues related to when we have serious staff assaults. When  
15 we -- we had any kind of serious situation in the institution or  
16 in or parole regions, I make sure I give a courtesy call to them  
17 and keep them in the loop as to what's going on with our staff,  
18 and the condition of our staff.

19 SENATOR BATTIN: You've talked about the money.  
20 You've talked about communications.

21 What about trust? Do you think that the  
22 association believes that what CDCR says, that they're following  
23 through on? That they can count on their word? Because I don't  
24 believe that they do.

25 So, having that assumption, how are you going to  
26 improve that relationship?

27 MR. RUNNELS: Follow through on any commitments  
28 we make to the various bargaining units.

1 SENATOR BATTIN: Say again, please?

2 MR. RUNNELS: We'd have to follow through on any  
3 commitments we make to the various bargaining units to improve  
4 the trust. And like I said earlier, have open lines of  
5 communication with them.

6 SENATOR BATTIN: Do you think they're sufficient  
7 now?

8 MR. RUNNELS: I don't think communications are  
9 sufficient now.

10 MS. HUBBARD: No, I don't either.

11 MR. RUNNELS: I would think that in our various  
12 institutions, whether it be the juvenile side of the house or  
13 the adult side of the house, or in the parole regions, I think  
14 you have a various degree of -- of cooperation between the  
15 bargaining units and whoever the management team is there.

16 I think we have some problematic areas within the  
17 institution. It's not just related to Unit 6. I think it's  
18 related to various other bargaining units which, when they come  
19 to our attention, we focus on that, try and get to the bottom of  
20 it. We use the Office of the Ombudsman. We use the Director's  
21 Office, the Associate Directors to basically go down and try and  
22 find out what the problem is.

23 I think more of the problem is at a Headquarters  
24 level, that we have to do a better job communicating between --  
25 and this -- you know, I think we have a very good rapport with  
26 various other bargaining units. I think that we have to extend  
27 an olive branch, and we have to have very open communications  
28 with CCPOA.



1                   SENATOR BATTIN: Well, okay. I've just got to  
2 tell you, I've been at this a while. I've represented my area  
3 now for 14 years, and I know there's always been problems.  
4 There's always problems at the prison and the warden. I mean,  
5 you're never, ever going to get rid of that.

6                   And they're all different. Sometimes they're the  
7 employees' problems; sometimes they're the warden's problem. I  
8 get that.

9                   But in my time, I just have never seen it this  
10 bad. And I've never seen the top leadership fight so hard and  
11 knock their head against the wall for so little gain.

12                  And it's just very frustrating to me to see it.  
13 And here you are today, in front of the committee I serve on. I  
14 just kind of wanted to vent that.

15                  I'm going to look at this all year long with  
16 every appointee we have from Corrections, because I want to see  
17 improvement. I want to hear from the people I represent, "Hey,  
18 things are better," instead of, "Gee, it just got worse."

19                  Thank you.

20                  SENATOR CEDILLO: I have some questions. I  
21 don't know the answer to this.

22                  What is this status of the collective bargaining  
23 process? This memo indicates that you guys have rolled over, or  
24 imposed a contract. Does that mean you impose all elements,  
25 including salaries and benefits? Are those changes being  
26 implemented as well as changes in the sick leave and other  
27 provisions of the contract?

28                  MR. RUNNELS: My understanding from DPA --

1                   SENATOR CEDILLO: Third, when is the last time  
2 you guys met with respect to this collective bargaining process?

3                   MR. RUNNELS: DPA has exclusive bargaining  
4 rights on behalf of the State of California.

5                   My understanding, CCPOA has sunshined with DPA  
6 last week. It might have been last week or early this week; I'm  
7 not sure of the exact date off the top of my head.

8                   Then DPA has a period of time to provide a  
9 sunshine package back to the union before they go to the table.

10                  The state imposed a last-best-final offer. I  
11 wouldn't term that as a contract, because to get a contract, I  
12 think you have to have an agreement. I think we had an impasse,  
13 and that's why the state implemented their last-best-final  
14 offer.

15                  Other than -- health benefits and salaries have  
16 not been implemented because that requires legislation.

17                  SENATOR CEDILLO: So, the state's implemented  
18 last-best-and-final in terms and conditions of employment? Is  
19 that what you're telling me? The state's implemented  
20 last-best-and-final in terms and conditions of employment, but  
21 not on benefits and wages?

22                  MR. RUNNELS: Correct.

23                  SENATOR CEDILLO: The state has done that, and  
24 that includes these take-aways?

25                  MR. RUNNELS: Correct.

26                  SENATOR CEDILLO: On a brighter note, last week  
27 several Members of the Rules Committee visited with you to a  
28 camp for inmates trained as firefighters and brush clearers,

1 that required inmates to provide food service, and various other  
2 training, vehicle maintenance, and other support services.

3 The trainer was from Cal FIRE, and was a very  
4 enthusiastic advocate for the program.

5 Can you tell me about the current program, how it  
6 works, how many camps there are, the number of inmates that do  
7 this work, and what their daily regimen is like? What their  
8 recidivism rate is compared to other general population  
9 participants?

10 MS. HUBBARD: We have more than 40 conservation  
11 camps for adult offenders within the state. We have two prisons  
12 that serve as our camp centers: one in Northern Camp Center in  
13 Susanville, the California Conservation Center; the other which  
14 we visited, the Sierra Conservation Center near Jamestown. And  
15 so, they oversee the camps for the adult offenders.

16 What we visited at Sierra was a good overview of  
17 both a Level I and Level II facility, in which many offenders  
18 were involved in both substance abuse treatment program and  
19 either academic or vocational programs. And that's part of what  
20 we saw.

21 We also went to what's termed a base camp that is  
22 located there on the grounds of the prison, which is a very,  
23 very unique opportunity that I think Mr. Runnels and I learned a  
24 tremendous amount -- amount about from the representative from  
25 Cal FIRE and from our own staff there, in which the offenders  
26 are involved in and have all ready been approved to be part of  
27 the Conservation Camp system. And they spend a very long  
28 traditional work day either fighting fires, clearing brush,

1 taking care of local communities.

2 But at the end of that work day, if they're not  
3 actually out, dispatched in geographical areas far away from the  
4 base camp, they have about an hour to shower, eat dinner. And  
5 at 6:00 o'clock, they're in chairs until 9:30 in the evening,  
6 taking part in kind of a secondary volunteer assignment in  
7 substance abuse through our traditional contractor that we have  
8 at many of our prison sites.

9 From there, as any offender that's part of a  
10 substance abuse program, they are offered to go into community-  
11 based substance abuse programs upon their parole.

12 So, what was suggested from the presentation that  
13 we had through the Cal FIRE member was to look at replicating  
14 that, whether at other fire camps throughout our system -- we  
15 heard of that -- or, he was very interested in the concept of  
16 reentry. Reentry in -- I think he had first posed it in terms  
17 of using parolees as perhaps firefighters, or in terms of  
18 conservation efforts. And so, that was something we -- we had  
19 not thought of, and we also asked whether that, the reentry  
20 concept for our conservation camp members that are still  
21 offenders, inmates, would also be a possibility.

22 So I followed up and got further information from  
23 the Cal FIRE firefighter and the warden at the prison so that we  
24 can do in a presentation to other members of our staff within  
25 Headquarters to look at replicating that program in terms of at  
26 other of our conservation camps that are out throughout  
27 California.

28 I don't have statistics, separate statistics. I



1 can look into what we do have in terms of their recidivism rates  
2 versus those that -- maybe a like population that hasn't gone  
3 through such a program.

4 SENATOR CEDILLO: You'll get back to us when you  
5 get some numbers?

6 MS. HUBBARD: I'd be glad to.

7 SENATOR CEDILLO: Let me just, if I may, have  
8 final comments on this failure to realize a mutually agreed upon  
9 MOU.

10 It's unacceptable. I'm amazed, astonished, that  
11 given the danger of running this type of an operation, that you  
12 would go forward without this having been settled.

13 Let me ask you, what are both of you individually  
14 going to do to help realize a mutually agreed upon Memorandum of  
15 Understanding?

16 I understand that DPA has its role, but it just  
17 seems to me that I could not be in your position and not have  
18 this be something that was successfully accomplished.

19 MS. HUBBARD: Dave and I are both new in our  
20 positions, but long-term within our careers in the department.

21 And so, we just since September, in our new  
22 roles, have been living with this implemented terms, and the  
23 relationship that lead up to that before the formal implemented  
24 terms.

25 So, from my perspective is to move forward on  
26 behalf of the department, in conjunction with DPA and the  
27 bargaining unit, to be successful in coming up with a mutual  
28 MOU, not continuing on as we have. And the process of

1 sunshining on behalf of the bargaining unit, and where we as a  
2 department, DPA, will go next, to me is a very first important  
3 step towards that.

4 And so we, in each our seats, in each of our  
5 positions within the department, are in the right place to craft  
6 us to be successful in getting there.

7 We're not totally in control of the table, I  
8 trust you understand. There's at least three parties at that  
9 table.

10 But we have very sound operational experience as  
11 to why we also would like a mutual agreement.

12 MR. RUNNELS: And I would add that everything  
13 that Suzan said, and in the sunshining package that the  
14 department and DPA goes forward with, that we actually make sure  
15 that that's a legitimate package to present to the bargaining  
16 unit, and that we put the appropriate people on the table that  
17 brings credibility and trustworthiness so that the union feels  
18 that it's actually an open negotiation and not just a show. I  
19 think that's very important.

20 And I think it's important that at my position of  
21 an Undersecretary, that I have ongoing, constant communication  
22 with that table to make sure that I have the tempo of what's  
23 going on with that communication, while at the same hand,  
24 keeping open lines of communication with the bargaining unit.

25 SENATOR CEDILLO: Let me say this. There's a way  
26 for you to go to realize that. Clearly, there is a lack, as  
27 Senator Battin mentioned, there's a profound fund lack of trust  
28 with your bargaining unit.

1                   When we talk about this process that you're  
2 talking about, the sunshining aspects of it, and I can say to  
3 you that I'm not trying to speak for the bargaining unit, nor is  
4 this a place for us to negotiate this, but clearly, as Senator  
5 Battin has indicated, I share his concern. There's a profound  
6 lack of trust from the collective bargaining agreement and the  
7 department.

8                   I think you hit it on the head. You've got to  
9 have people at the table who are credible, who are trustworthy.  
10 People who believe are there with the ability to bring a  
11 resolution to this matter.

12                   Some people are not appropriate for that, and you  
13 are this a position, and should be in the position to set  
14 timetables with benchmarks for progress.

15                   MR. RUNNELS: Correct.

16                   SENATOR CEDILLO: If the progress isn't made,  
17 then clearly we don't have the right people at the table. It's  
18 that simple.

19                   MR. RUNNELS: I understand.

20                   CHAIRMAN PERATA: This is the public portion.  
21 Why don't you just use the side mike.

22                   MR. WARREN: My name is David Warren on behalf of  
23 Taxpayers for Improving Public Safety.

24                   Senator Perata, I've never had the benefit of  
25 Catholic education, but based on a Hebrew one, you guys started  
26 a half hour early, so everything was just fine.

27                   [Laughter.]

28                   MR. WARREN: I've known Ms. Hubbard since a

1 period before Mr. Kernan's description of me as being a  
2 geriatric type of individual, and she has -- a long time. And  
3 she has been an individual who's been forthright and honest with  
4 me, to the point of sometimes irritation.

5 [Laughter.]

6 MR. WARREN: But she's always said exactly -- I  
7 always knew exactly where she stood.

8 We've had major agreements and disagreements, but  
9 they've all been intellectual. And at the conclusion, we've  
10 shaken hands, parted friends, and had a cup of coffee.

11 I believe her to be an excellent administrator.  
12 I would ask your indulgence to also speak to the concern of the  
13 other nominee, because I have a personal deadline because of the  
14 late start of the meeting today.

15 I would like to comment --

16 CHAIRMAN PERATA: What time's post time?

17 MR. WARREN: No, actually it's Shavuos. And a  
18 certain mother-in-law's arriving at my wife's house, and I'm  
19 supposed to be there.

20 [Laughter.]

21 CHAIRMAN PERATA: A real deadline.

22 MR. WARREN: There's a real deadline.

23 I would like to make one important point on  
24 behalf of families. My letter, I think, should be explanatory.

25 That is, too many times inmates are injured  
26 inside, or become ill inside, and family members become quite  
27 distraught.

28 The nominee instituted at High Desert Prison a



1 segregated telephone extension for family members to call, leave  
2 their name and phone number, and identification of the inmate,  
3 and they received a return phone call as to the inmate's medical  
4 status.

5 I would hope that becomes a best practice in the  
6 prisons, but it has been a wonderful thing for the family  
7 members, to be able to have some peace of mind. I have personal  
8 knowledge of one experience at DVI, where an inmate was gone for  
9 four weeks, receiving cancer treatment. And the family members  
10 called your office; they called the Department of Corrections;  
11 they called their various representatives, only to find out  
12 after the inmate had been returned that he had almost died. And  
13 that his wife, who is a nurse, had been two stories below at the  
14 time he was in the ICU.

15 So, I thank you very much. Have a good day.

16 CHAIRMAN PERATA: Thank you.

17 MS. ESTES-DANGERFIELD: Good afternoon. My name  
18 is Darlene Estes-Dangerfield. I'm President of the Association  
19 of Black Correctional Workers.

20 And we are here in support of Mr. Runnels and Ms.  
21 Hubbard. My staff, executive board as well, showed up today.  
22 Usually it's just Chris and I, but this was very important to us  
23 to be here on today.

24 Mr. Runnels, excellent candidate, but I'd like to  
25 speak personally about Ms. Hubbard.

26 I've known Ms. Hubbard for quite a while. I met  
27 her by chance at one of her facilities as warden. And she was  
28 known as the warden that would get out and walk about.

1                   And Ms. Hubbard walked up to me and she said, "My  
2 name is Suzan Hubbard. And you are?"

3                   And so, I told her who I was. We chatted a  
4 little bit. And the very next time she said, "Well, I see you  
5 have some things to do, but let's meet later, tomorrow morning,  
6 early tomorrow morning and have a chat."

7                   In the position that I was in, I would go to the  
8 institutions to do audits, so, you know, usually wardens would  
9 say those kind of things and never follow through. But this  
10 particular morning, I got there the next morning, and 8:30  
11 sharp, she was standing right there. And she said, "Come on  
12 into my office. Let's chat."

13                   And just -- not knowing me, because I wasn't an  
14 employee there, but I had spoke to some of the other employees  
15 there and I said, you know, what's this lady all about? And  
16 they said that's her personality. She gets out. She talks to  
17 her staff.

18                   She's concerned, but don't get confused because  
19 she is firm. She will take care of business.

20                   And so, her not knowing that, particularly that  
21 day, she had -- that meant a lot to me. I had some things that  
22 were going on, and obviously she saw something that day that she  
23 stopped to take time to, you know, to sit with me and go over  
24 those things.

25                   So, I just want to say that you have excellent  
26 candidates here. She's got wealth of experience, knowledge. I  
27 have been watching her from afar as a mentor. You know, never  
28 saying, "Hey, would you be my mentor," or anything, but just

1 from afar. Just awesome. She's an awesome lady. Can't say  
2 anything more.

3 CHAIRMAN PERATA: Thank you.

4 MR. TATUM: Good afternoon. I'm Richard Tatum.  
5 I'm the State President of the California Correctional  
6 Supervisors Organization. Our organization represents the  
7 supervisors and managers in the Department of Corrections.

8 We, myself, have been in this business since  
9 March of 1968. And I've worked a lot of -- in different  
10 institutions, and known these folks for many, many years.

11 Their honesty, integrity, are the type of people  
12 that we -- we need, along with their experience in the  
13 Department of Corrections.

14 And I'd like to say, our organization supports  
15 the sick leave policy that was just implemented in the  
16 department. We've been requesting this for a long period of  
17 time to Mr. Tilton, and I think Mr. Tilton finally came around  
18 and put this in hand. It's something that we've needed for  
19 several years. We've submitted these policies, and we needed it  
20 done. Something needed to be done here to bring the sick leave  
21 back into -- to where it should be.

22 And I think we appreciate Mr. Tilton's honesty,  
23 integrity in bringing this thing forthright, finally with it.

24 Of course, these folks aren't -- are not the  
25 people that implemented this, but they're supportive of it, and  
26 our organization is supportive of it.

27 With that, requesting that you please bring these  
28 folks in as -- as people that we think we can work with. With

1 that, thank you.

2 CHAIRMAN PERATA: Thank you.

3 Anyone else in favor? Anybody opposed?

4 MR. BROWN: Craig Brown for CCPOA.

5 We're not opposed. I just wanted to clarify the  
6 record.

7 We have not sunshined. We asked the  
8 administration a series of questions regarding the start of  
9 bargaining, and so on. We have not sunshined.

10 So, I think there was some discussion, and I just  
11 wanted to clarify that.

12 CHAIRMAN PERATA: You probably didn't know that,  
13 but that's accurate.

14 Well, first of all, thank you for what you do,  
15 because I don't know why anybody would.

16 There's one area that I wanted to just  
17 underscore. That is -- and we've talked a little bit about  
18 this. I know you've talked with staff -- it's the whole matter  
19 of visitation, family visitation.

20 There are a number of obvious things that we  
21 could be critical of: the long time standing in line. In some  
22 of your garden spots where you're located, it's warm, and people  
23 have no shade, and few places to sit.

24 The visitors parking lots are often sometimes  
25 distant, and many of the visitors are -- I won't say elderly.  
26 What was the word he used over there? Geriatrically inclined.  
27 You know, they have to walk again and under harsh conditions.

28 And it seems that when you were at High Desert,



1 you put under best practices something in place that would seem  
2 to me if it's good there, it should be good everywhere.

3 MR. RUNNELS: I agree.

4 CHAIRMAN PERATA: I would like to just ask you,  
5 in your professional capacities, to give a real hard look at it.  
6 And I've talked to some wardens who have come through here, and  
7 they've said that when they double and triple cell, we pretty  
8 much began to lose space where we could allow that to happen,  
9 and I appreciate that.

10 But as we begin, whatever you could do. It's  
11 like the kid's getting older, and you can't talk about what's  
12 going to happen in five years because they're going to change  
13 dramatically. You've got to worry about how can you make the  
14 most out of where we are today.

15 Inmates who don't get visitation rights, or their  
16 visitation rights or the accommodations aren't what they should  
17 be, I think it has a tremendous effect on our whole  
18 rehabilitation side of the equation.

19 And I know the department has adopted a policy  
20 that says to the effect that recidivism reduction is bound to  
21 and involved with family reunification.

22 So, I would just urge you to take a good, long,  
23 hard look at that, and then do something.

24 And if you need things that are constructive,  
25 there are many people in this building, and I think you've heard  
26 today, that would be more than happy to go to bat if something  
27 is necessary.

28 In the final analysis, I think your job's really

1 hard to do because in the three years that I've been in this  
2 position, almost four, I can never figure out who the hell's in  
3 charge. This is only agency in the State of California  
4 government where you ask the question, "Who am I talking to,"  
5 and you don't get an answer.

6 It makes it very difficult for an institution  
7 this size, that seems to be so broken, makes it very difficult  
8 for you all to function. I think, frankly, if the department  
9 had a better rhythm, you wouldn't have to be worrying about sick  
10 leave and people not using it. My experience is, that's  
11 symptomatic. So, you're really curing a symptom of the disease,  
12 not the disease.

13 Neither one of you decided you want to be  
14 Secretary of the Agency. High marks for that.

15 We lured Mr. Tilton back under false pretenses.  
16 He caught on. He left.

17 [Laughter.]

18 CHAIRMAN PERATA: So, it's a tough, tough job.

19 But what I do know is this. I represent the City  
20 of Oakland. The City of Oakland's been in receivership, the  
21 school district has been in receivership for almost five years.

22 There are principals, who would be analogous to  
23 what you would be doing within an org. chart, who are doing an  
24 excellent job. And they have teachers and staff that love  
25 working at the schools in which those principals are there.

26 And so, just because the top is dysfunctional,  
27 and believe me, this district has been for years, there are  
28 still some good things going on because people such as

1 yourselves are taking it upon themselves to do things.

2 And you can punch it upstairs, and I don't know,  
3 or downstairs, whatever the hell. You do that; you do that. I  
4 don't know how long you want to be employed. You need a good  
5 union.

6 [Laughter.]

7 CHAIRMAN PERATA: But what I would expect is that  
8 you could have, and you seem to have had, great successes so  
9 far. Now you're in even greater positions of responsibility and  
10 authority. You've expanded your reach.

11 I would just encourage you to do that. You have  
12 a sense. You came up through the ranks. You know what it's  
13 like. I bet you can spot bull shit faster than most people.

14 So, be the leaders that you've been selected to  
15 do. God knows that we'll do what we can, but Republicans and  
16 Democrats alike, we can't figure this thing out. We've done  
17 everything that we can.

18 Probably the last thing you ever want to do is  
19 have us decide how to design and make the thing work. It's like  
20 the camel and the horse.

21 But thank you for being here. I hope your  
22 nervousness is now over. There may be a few follow-up questions  
23 that I have. I will happy to give you those in writing. You  
24 have a little bit more time to go before you have to go to the  
25 Floor.

26 Thank you all.

27 We have a motion?

28 SENATOR BATTIN: Move.

1 CHAIRMAN PERATA: We have a motion to approve  
2 both. Call the roll, please.

3 SECRETARY WEBB: Cedillo.

4 SENATOR CEDILLO: Aye.

5 SECRETARY WEBB: Cedillo Aye. Dutton.

6 SENATOR DUTTON: Aye.

7 SECRETARY WEBB: Dutton Aye. Padilla.

8 SENATOR PADILLA: Aye.

9 SECRETARY WEBB: Padilla Aye. Battin.

10 SENATOR BATTIN: Aye.

11 SECRETARY WEBB: Battin Aye. Perata.

12 CHAIRMAN PERATA: Aye.

13 SECRETARY WEBB: Perata Aye. Five to zero.

14 CHAIRMAN PERATA: Five-zero, congratulations.

15 [Thereupon the Committee

16 acted upon legislative items.]

17 CHAIRMAN PERATA: We had last week or two weeks  
18 ago Robert Jones, Deputy Secretary for Policy and Enforcement  
19 with the Labor and Workforce Development Agency.

20 I want to read a statement into the record  
21 because I think, based upon what was said at that hearing, I'm  
22 going to enter into the record a letter we received from Tracee  
23 Lorens, the attorney who testified in opposition to Mr. Jones at  
24 his hearing. He spent much time discussing her actions last  
25 week when he testified. I think her response to his comments  
26 deserve a place in the public record, particularly since she did  
27 not have an opportunity to rebut.

28 I intend not to bring the appointment of Robert



1 Jones back to the Rules Committee. He is the Deputy Secretary  
2 for Policy and Enforcement in the Labor and Workforce  
3 Development Agency. We had two weeks of hearings on this  
4 appointment, which resulted in dramatically different versions  
5 of events that occurred when he was Chief Counsel for the  
6 Division of Labor Standards and Enforcement in 2006 and 2006.

7 His job, among other things, is to advise the  
8 Secretary of the Agency on enforcement policy issues. Yet,  
9 after only two months on the job, he had to be reminded by the  
10 ACLU -- and it could have been any number of other First  
11 Amendment rights defenders -- in an exchange of letters, that a  
12 memorandum he authored and sent to the attorneys was "an  
13 overboard prior restraint on speech." It's also known as a gag  
14 order.

15 Probably in this business, if you didn't have  
16 problems like this, you wouldn't need a whistleblower law.

17 We do not hear many labor appointments because  
18 the administration doesn't seem to care that much about people  
19 who are in the workforce. On the rare occasion when the  
20 Governor did appoint someone in a position of broad oversight,  
21 broad oversight policy, he unfortunately chose someone that does  
22 not seem to have an appreciation of the civil service system and  
23 the law.

24 When I asked Mr. Jones during his confirmation  
25 hearing to reflect and reconsider the policy he had concocted  
26 and enforced, he said that upon reflection, had he to do over  
27 again, he would.

28 And frankly, I just do not want to give him that

1 opportunity. This matter will be terminated in this Committee.

2 SENATOR BATTIN: May I just make an observation  
3 here.

4 Since the Secretary of Appointments is in our  
5 audience, and I know the Governor's Office is listening, I see  
6 over the last few years I've seen a trend here and I think I can  
7 help the administration out on getting their appointee through.

8 The thing that Mr. Jones had in common with some  
9 other appointees that failed -- Reed Hastings, David Crane,  
10 Jerry Farmer -- they're all Democrats. So, The Governor needs  
11 to stop appointing Democrats, and then the Committee will stop  
12 rejecting them and we can get down with our business.

13 We actually have a longer list than that. We'd  
14 be happy to provide it to you, if you'd like.

15 CHAIRMAN PERATA: That's as good an explanation  
16 as any I've heard.

17 With that, we're adjourned.

18 [Thereupon this portion of the  
19 Senate Rules Committee hearing  
20 was terminated at approximately  
21 3:55 P.M.]

22 --ooOoo--  
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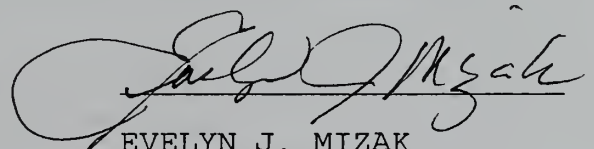
CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 30<sup>th</sup> day of May, 2008.

  
EVELYN J. MIZAK  
Shorthand Reporter

APPENDIX I

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Senate Confirmation  
Suzan L. Hubbard  
Director, Division of Adult Institutions  
California Department of Corrections and Rehabilitation  
Responses to Senate Rules Committee Questions  
May 15, 2008

**Senate Rules Committee**

MAY 15 2008

**Statement of Goals**

**Appointments**

*The director of the Division of Adult Institutions provides leadership, management, and oversight for the state's adult prisons, conservation camps, and community correctional facilities. As part of the management team for the Department of Corrections and Rehabilitation, the director oversees all custody operations.*

*The California Department of Corrections and Rehabilitation (CDCR) is responsible for incarcerating about 170,000 adults in 33 institutions and 40 fire camps and other facilities, and 2,100 juveniles in 8 facilities and 2 camps. The department manages another 126,000 adult parolees and approximately 3,000 juvenile parolees. The stated mission of the department is to improve public safety through evidence-based crime prevention and recidivism-reduction strategies.*

- 1. Please provide us with a brief statement of your goals as director of the Division of Adult Institutions. What do you hope to accomplish during your tenure? How will you measure your success?**

My goals as the Director of the Division of Adult Institutions (DAI) are multifaceted. Some of the goals I plan to achieve include:

- Reduce overcrowding and housing of offenders in non-traditional beds;
- Reduce violence by offenders towards staff and other offenders;
- Ensure wardens are facilitating full time participation in rehabilitative programs;
- Work collaboratively with counterparts in Division of Education, Vocations Offender Programs (DEVOP), Division of Addition and Recovery Services (DARS) and Division of Community Partnerships (DCP) to expand current treatment, education and leisure time activities;
- Work with Division of Correctional Health Cares Services to ensure offenders are provided full access to essential health care;
- Incorporate corrective actions and training needs identified through various audits by departmental staff and external agencies;
- Identify and develop future candidates to assume Warden and other manager positions in our department;
- Ensure visiting programs are monitored for quality and consistency.

To accomplish these goals, I must focus on making certain that the prison environment is safe for our staff, offenders, and the public. The Deputy Director, Associate Directors and I meet frequently to focus on any issues which prove to be barriers toward offenders getting to their assignments, recreational activities, visiting, or

medical services. We have direct communication with the Wardens and their staff to ensure that we understand any barriers and assist Wardens through those issues. While acknowledging that Wardens are highly skilled and experienced staff at the executive level, we still find it appropriate to guide them, give them direction and seek resources to assist them in their day-to-day responsibilities towards the Department's goal of increased offender participation in the currently offered rehabilitative programs.

Working in partnership with DARS, we have seen offender participation increase from 75 percent to 94 percent in the past six months. We have also seen an increase in our educational results. A comparison between third quarter Fiscal Year (FY) 2006-07 and third quarter FY 2007-08 data, shows a 129 percent increase in the number of High School diplomas received and a 35 percent increase in the number of Test of Basic Education (TABE) exams given, indicative of access to the inmates for programming and education assessments. Further, according to DEVOP, class closures due to non-educational reasons have decreased 6 percent for academic and 14 percent for vocational. This demonstrates progress in filling our education and drug treatment assignments. It is my goal to fill 100 percent of the program assignments with inmates who can receive the most benefit. I will accomplish this through: institutional staff utilizing viable waiting lists filling vacant treatment and program slots within two days of the vacancy; utilizing the assessment tool, Correctional Offender Management Profiling for Alternative Sanctions (COMPAS), to identify, through classification committees, the most suitable inmate/program match; and releasing programming inmates determined to be uninvolved in incidents when lockdowns occur as swiftly and safely as possible.

The Department has identified seven adult institutions and one Community Correctional Facility in which 2,000 substance abuse treatment slots will be added by December 2008. My responsibilities toward ensuring this occurs will be to monitor the construction progress on the modular buildings for these programs, which is being done by inmates at Folsom State Prison in conjunction with the Prison Industry Authority. This monitoring will be done through the Associate Director and Warden of Folsom. I will make sure that our Wardens and Associate Directors at each of these sites coordinate with other divisions on the site preparation and placement of the modular units, develop appropriate custody staffing, and that interaction with bargaining units has occurred. I will also work with the Classification Services Unit (CSU) and the staff of all of our missions to make sure we have a sufficient pool of inmates at each of these sites that meet the criteria for assignment to substance abuse and education slots. I will also assist in facilitating training for the substance abuse providers and correctional staff working in these programs by ensuring that training is scheduled by the Wardens in conjunction with DARs for an effective delivery of service.

Of vital importance to the Department and other stakeholders is that I mentor, train, and identify individuals to step into the executive position of Warden. Wardens are



key exempt employees for our Department, responsible for public safety, providing a safe rehabilitative environment for offenders and staff, representing the Department to various local community stakeholders, and managing a complex, multi-million dollar operation. It is my responsibility, in conjunction with the Deputy Director and Associate Directors, to ensure we are giving Warden candidates access to leadership training, involvement with outside entities such as the National Institute of Corrections (NIC); acting assignments in a variety of positions and providing critical feedback on their performance, judgment and decisions.

I am also responsible to engage these leaders in frank discussions about the role of a Warden; the vetting process conducted by the Office of the Inspector General, and the Department's expectations of them on the job. I also share with them that there is no "off the job." The Warden's responsibility is 24 hours per day everyday of the week.

I believe that my almost 29 years in the Department has well prepared me to provide this guidance and leadership. Having been a manager since 1989, I have served as the Warden or Acting Warden at six prisons; California State Prison (CSP)-Sacramento, Mule Creek State Prison, CSP-Solano, Central California Women's Facility (CCWF), Northern California Women's Facility (NCWF) and California Medical Facility. I have had responsibility for both male and female offenders, inmates assigned to security housing units (SHU), death row, substance abuse programs, and the activation and operation of mental health programs in a variety of custody levels, and directing a variety of emergency responses in these prisons.

I have also served as an executive manager for a variety of headquarters responsibilities. These have included the Southern Regional Administrator responsible for the ten prisons located in Southern California, both male and female, and as the acting Associate Director for both the High Security and Transitional Housing and the Female Offenders Missions. My assignment as the Assistant Deputy Director and the acting Deputy Director has given me insight in managing the Department's classification, transportation, case records, education, and emergency operations units. I have represented the Division in interaction with other state and federal agencies, served as an expert witness in a variety of class action lawsuits, and collaborated with other divisions in our department.

I believe this experience serves me well in selecting, mentoring, and monitoring the Wardens and the Associate Directors of our division. I believe my subordinates, peers, and supervisors view me as a resilient, ethical leader. These qualities and my professional experience will serve me well in managing the day-to-day operations of this complex adult prison system and in accomplishing my goals. I fully appreciate the magnitude of the responsibility vested in me as the Director of the Division of Adult Institutions. I recognize the opportunity I have to be an integral part of the CDCR shift back to a model that facilitates offender change.

## **Reorganization and Coordination of Responsibilities**

*On July 1, 2005, the Youth and Adult Correctional Agency was reorganized pursuant to Senate Bill 737 (Romero) Chapter 10, Statutes of 2005, into the Department of Corrections and Rehabilitation. The intention of the reorganization was to improve the effectiveness and efficiency of the departments and boards that made up the former Youth and Adult Correctional Agency. Secretary James Tilton told the Rules Committee he wanted the different divisions to work together to achieve consistent practices. One of the concerns about the reorganization was that it would require all issues to be raised to the secretary and undersecretary for approval or resolution.*

- 2. All adult custody staff report through you to the Chief Deputy Secretary of Adult Operations. Please provide an example of the type of decision you would make on your own and the type of decision that would require involvement of the Undersecretary of Programs.***

Prison level custody operational issues are generally handled by Wardens reporting to the respective mission's Associate Director and then to the Director of DAI. I work closely with the Associate Directors and Wardens on custody operational issues such as lockdowns, training, and medical quarantines.

As the Director, DAI, my responsibility is to be aware of the status of institutional programs and to direct Associate Directors and Wardens to develop programs to meet the needs of their inmate populations. An example of a decision I would make would be the establishment of an Alternatives to Violence Program, such as the one I established at the California Medical Facility while serving as the Warden. This self-help program meets the needs of the offender population by using community volunteers, without requiring funding. These groups promote the educational, social, cultural, and recreational interests of participating inmates. This authority, along with the rehabilitative mission of CDCR, encourages institutions to seek opportunities that create, enhance, and expand programs.

Existing evidence-based programs, such as academic and vocational programs, and substance abuse treatment as well as the development of new evidence-based programs, are the responsibility of the Undersecretary of Programs and her executive staff. Changes to these programs would require the involvement of Adult Programs management.

Recently, the Rehabilitation Strike Team, created by Governor Schwarzenegger in 2007 to drive rehabilitation improvements, produced a report entitled "Meeting the Challenges of Rehabilitation in California's Prison and Parole System." The report established several project sites to pilot Assembly Bill (AB) 900 activities. An example of a collaborative effort would be the Demonstration Project at CSP-Solano. The project kick-off meeting included Kathy Jett, Undersecretary, Programs, and David L. Runnels,



Undersecretary, Operations. The goal of the project is to bring rehabilitation programs back into the Department by increasing utilization of existing programming resources, increasing programming capacity by using existing or redirected resources, and to increase capacity by using new resources (i.e., staffing and space). As a result of the Demonstration Project, we have successfully deactivated a gymnasium used as a housing unit and reopened it as a functioning gymnasium; conducted a gang activity sweep; and activated 200 Level II Substance Abuse Program slots. Future project activities include development of a privilege group "C" status operational procedure for inmates who refuse to program; development of procedures to allow continued programs during lockdowns or modified programs; creation of procedures for expanded information dissemination to keep inmates informed of their responsibilities; and the creation of additional classroom space. DAI is working closely with Adult Programs to meet the goals outlined in AB 900 related to bringing rehabilitation back into the Department.

***3. Prior to the reorganization, the head of adult operations was also responsible for program. Please provide an example of how you coordinate with the program division. Who is responsible for self-help programs such as anger management and victim awareness? What role do you and your staff play in monitoring self-help program quality and consistency?***

Working collaboratively with other divisions/programs is key to the successful implementation of our departmental goals of reducing recidivism, providing a safe and secure environment for our staff and inmates and ensuring public safety is maintained.

As the Director, DAI, my responsibility is to be aware of the status of institutional programs and to direct the Associate Directors and Wardens to develop programs to meet the needs of their inmate populations. It is the responsibility of every Warden to ensure that their inmate population has access to self-help, leisure time, and activity group programs. Further, the Warden approves all self-help and leisure-time activities to ensure safe operations. Each institution, based upon their geographic location, offender population, and mission has a different set of needs for self-help programs. I encourage the Associate Directors and Wardens to maintain an open dialogue and work in a cooperative spirit with their instructional personnel.

I have a fundamental responsibility to listen to my Associate Directors and Wardens, providing guidance and oversight in the development of new self-help programs within the institutions. I communicate and work in cooperation with the DEVOP, DARS, and DCP to evaluate the ongoing needs of the institutions. I ensure all decisions are based on input from all involved stakeholders.

For example, California Appellate Court decision, "*in re Tate*," required extensive recalculation of offender release dates, with many inmates receiving expedited parole

dates. I worked collaboratively with Adult Programs management staff from various divisions to ensure the effects of the decision were appropriately handled with respect to victim notifications, and that substance abuse programs populations were maintained. Another example of coordination of issues with Adult Programs is the establishment of Community Partnership Managers (CPM) at each institution. The CPMs report to Wardens and have responsibility for the development of meaningful collaborations with key community stakeholders. These stakeholders include local law enforcement, local governments, faith-based and community organizations, and academic institutions. The CPMs are also responsible for managing Inmate Leisure Time Activity Groups, Inmate Family and Religious Programs, and volunteers. I worked closely with Adult Programs staff in the establishment of the CPM positions, and in ensuring each institution fill these positions.

I expect Associate Directors and Wardens to make a concerted effort to ensure all assigned offenders are attending their programs, institutions work through barriers preventing inmates from attending programs, and Wardens monitor the status of the programs on a daily basis.

***4. In the past, adult custody operations were organized in three geographic regions. Since the reorganization it has been organized by prison mission, such as reception centers, high security prisons, and female institutions; these associate directors report to you. How does the current mission-based system encourage directors with wide-ranging geographic responsibilities to mentor wardens at sites distant from Sacramento headquarters?***

Having served as the Southern Regional Administrator, Institutions Division, for two years, with responsibility for ten institutions, including male and female, Levels III and IV institutions and Reception Centers (RC), I had the opportunity to assess the operation from several viewpoints. Because my office was located in the field, it afforded me the ability to provide constant oversight and I was able to visit my institutions routinely. However, with each institution having a different and distinct mission, it was sometimes challenging to provide focused direction to all ten institutions, taking into account the varied missions. Under the mission-based organization structure, in addition to my current appointment as Director, I served as acting Associate Director for both the Female Offender Institutions and the High Security and Transitional Housing missions. As Associate Director, I was able to critically assess this configuration, as it related to my ability to efficiently provide institutional oversight. I found that although the institutions were grouped according to similar missions, each institution still had different needs and unique issues. Understandably, the geographic span of institutions within each of the missions represents challenges to effective oversight of prison operations. Even so, I believe the development of the mission-based structure enhances an Associate Director's ability to provide clear, consistent direction to institutions within their mission based on similar institutional characteristics.



Mentoring of Wardens and future Wardens is essential to producing effective departmental leaders of tomorrow. Mentoring is fostered by means of several different methods. Wardens participate in enhanced training utilizing the national correctional model, sponsored by the NIC; peer and leadership training; quarterly meetings held with all institutional Wardens, Associate Directors, and myself; and continuous interaction with their Associate Directors, executive staff, and Associate Directors of the other missions.

**5. *What is your expectation for how much time associate directors under your supervision should spend at institutions, regardless of their distance from headquarters? How do you evaluate the quality of an associate director's performance? How do you decide when to provide direction to wardens personally rather than through the associate directors?***

It is my expectation that the Associate Directors utilize as much time as necessary to effectively meet the workload demands of managing field operations. The Associate Directors must also develop a collaborative working relationship, effectively mentor, and guide the Wardens and executive staff within their missions. I am fortunate in that I have an extraordinary management team who consult each other and work closely together on a daily basis to resolve the myriad of operational issues that cross mission lines.

I also expect that a consistent monitoring and evaluation plan be adhered to by all Associate Directors. These and other tasks include routine physical tours, review of institutional daily activity reports and routine conference calls with Wardens and executive staff. Associate Directors must avail themselves 24-hours per day to provide effective oversight and guidance to their institutions.

Since assuming the responsibilities as Director, I have maintained my commitment to establishing collaborative partnerships with my Associate Directors and executive staff. To this end, I am in continual contact with all of the Associate Directors and evaluate performance based upon the outcomes of systemic audits, statistical data and analysis provided through our Computer Statistics (COMPSTAT) process, open lines of communication and personal visits to the institutions. Additionally, I evaluate performance based upon the Associate Director's ability to keep me and other executive staff apprised of significant events and issues concerning their institutions. I also assess an Associate Director's ability to interact not only with institutional staff, but also with individuals from different divisions within CDCR and the public.

Given the nature of the responsibility for oversight of Adult Institutions, it is essential that I develop and maintain a comfort level for communicating not only with Associate Directors but also with Wardens and their executive staff. I strive to empower the Associate Directors to effectively manage their institutions. However, while not

circumventing the authority and leadership of the Associate Directors, it is sometimes more effective to make direct contact with the Wardens and their executive staff in responding to emergencies, crisis and public or political inquiries on specific issues related to the safety and security of the institution. I then am able to communicate my concerns with them directly and hear theirs as well. This enables me to maintain continuous professional relationships with the Wardens and their staff and not be so far removed in the directorship.

With almost 29 years of CDCR experience, I believe that establishing professional relationships with staff is an effective tool in maintaining a successful line of communication.

**6. *What role do you play in the selection of wardens? What is your responsibility for evaluating the success or failure of a warden?***

The CDCR has grown considerably over the past 20 years, now housing 170,000 inmates in 33 prisons across the state of California and over 3,700 in out-of-state facilities located in Arizona, Tennessee, Oklahoma and Mississippi. With the increase in size has also come the need to identify well-rounded professional candidates for the position of Warden to manage prison operations.

I play a direct role in the identification and selection of Wardens. Since taking over as the Director in November 2007, I have established a process to identify upcoming Warden vacancies. I meet with the Deputy Director and Associate Directors to discuss potential candidates, including their strengths and weaknesses. The team then identifies the needs and history of an institution with the goal being to establish a productive and complementary Warden and Chief Deputy Warden team.

Additionally, I ensure that the Associate Directors are identifying potential Warden candidates for future development. I pay particular attention to the candidates past position history, education, training, and leadership qualities.

I believe it is important to continuously monitor and mentor Wardens to ensure success. I take on this responsibility in a three-phased approach:

- Data collection  
Review of current data and statistics pertaining to respective institutions. The data is contained in various forms: COMPSTAT, Monthly Budget Reports, Program Status Reports, Appeal Reports, and operational, peer, and security reviews.
- Associate Director Communication  
There is ongoing communication with the Associate Directors regarding their assigned facilities and warden oversight. The Associate Directors are clear on



my expectation of oversight and mentoring of wardens. Issues are brought forward in regularly scheduled meetings and through issue specific communication.

- Institution Site Visits

The most beneficial avenue of Warden Assessment is through institution site visits. Touring the facilities and having one on one dialogue with Wardens provides necessary information to assess the Warden's operational abilities. Talking with staff at the facility provides important dialogue to determine if a Warden is moving an institution forward in a positive direction with a clear mission. My interactions with the local inmate family council, citizen's advisory committee, and formal and informal meetings with inmates also serve as a barometer for the institution's operational effectiveness.

***7. In the past year, the department added two undersecretary positions—for programs and administration—including support services such as research and facility planning. Because almost every operational decision has an administrative component, how do managers know which undersecretary is responsible for approving decisions? For example, what steps will prison wardens have to take to implement a new anti-violence program for inmates, establish additional correctional officer positions, or reallocate unspent funds within their own budgets?***

The addition of the Undersecretary positions for Programs and Administration has ensured necessary collaboration occurs with the involved stakeholders at each level of an executive decision. I believe these positions have created the needed expertise to ensure efficiency, fiscal soundness, and leadership for the organization.

Managers use the structured chain of command to gain approval for executive level decisions. I utilize quarterly warden meetings to provide opportunities for managers to gain insight into new departmental organization strategies and processes available to implement new programs. Wardens may implement inmate leisure time activity groups, subject to geographic, offender population and fiscal/operational limitations.

If a warden and their administrative staff determine a need for an anti-violence program beyond the scope of an inmate leisure time activity, they would work in conjunction with my office via their Associate Director, the DCP, DEVOP and the Fiscal Services Unit to ensure appropriate curriculum, funding for additional correctional officers and fiscal resources were available. This request would require the approval of the Directorate, Office of Budget Management, executive leadership, control agency approval and ultimately legislative approval.

**8. *Who creates new in-prison programs, the warden who reports up the chain of command to you and the undersecretary for operations, or the programs undersecretary? How do you standardize programs from prison to prison? What role do you play in monitoring and evaluating this?***

The creation of new inmate leisure-time activity groups is the responsibility of the Wardens and their administrative staff, who are given that authorization under the California Code of Regulations, Title 15. With existing resources such as staff sponsors, community volunteers and existing treatment or vocational space, the Warden can meet the programming needs of the inmate population.

Establishing in-prison programs, beyond the scope of an inmate leisure-time activity group, is a joint collaboration of efforts by the Warden, Associate Director, the DCP, the DEVOP and my office. I ensure that every stakeholder is aware of the potential impact at all levels of the program. The operational oversight of the programs within the institutions is the responsibility of the Warden.

The establishment of programs is based upon the individual needs of each institution. Associate Directors and Wardens are mindful of their geographic location, availability of staff and community resources and needs of their inmate population. I provide oversight via the Associate Directors to ensure that Wardens resolve barriers to programming, including lockdowns, staffing shortages and program space. I monitor the institutions programs data via the monthly COMPSTAT reports.

**Monitoring Progress**

*For some years the department has sought to develop information technology systems, as well as standardized performance measures, that could be applied throughout its 33 prisons. Likewise, the department has sought to measure actual practice against the stated policy. And it has held regular staff meetings using computer-assisted statistics to compare parts of its operations in a process known as COMPSTAT.*

**9. *What benchmarks do you review on a regular basis to determine whether individual adult facilities are operating safely and promoting the department's mission? What red flags do you look for as part of your routine?***

I am exceedingly fortunate that CDCR has a variety of internal and external tools to measure performance. Invaluable tools, such as COMPSTAT, Daily Briefing Reports, Incident Packages, Monthly Budget Plans, Audits, Corrective Action Plans, Offender Information database generated reports, Appeals, Court compliance monitoring reports, Adult Program participation reports, lockdown reports, Office of Inspector General



Reports, Bureau of State Audit reports, Litigation driven reports and Legislative Analyst Office reports are all available to me to as benchmarks of performance.

However, the enormity of available information requires that I rely on the experience of the Deputy Director, Associate Directors and various Division Chiefs to assist in monitoring the information and informing me of areas of concerns. I also interact with various divisions in the organization, such as Office of Court Compliance, Office of Research and the Office of Audits and Compliance, to assist the DAI in evaluating individual institutional performance. The reinstitution of the Operational Peer and Security Reviews in the prisons has been extremely effective in recognizing areas in the institutions that are very successful and areas that require improvement. I routinely review these performance measure tools to identify "red flags" and seek solutions to address them, whether the information demonstrates deficiencies such as low attendance in institutional programs or that a facility is projected to exceed its budget authority.

The DAI management team also relies on years of varied experience that alerts the management team when information, an incident or issue appears inconsistent with departmental policy or training. On a continual basis, the management team is informed of incidents that occur in the institutions and the vast majority is handled professionally and appropriately and is the unfortunate reality of managing prisons. However, some incidents or issues come forward that appear to involve a violation of policy or require a policy review. In each of those events, I request a review of the facts with potential responses from entities such as the Associate Director, Chief of Transportation Unit, or the Office of Internal Affairs; I select the personnel based on the circumstances.

To remain informed of potential issues and review performance, I have regular meetings with the staff that I directly supervise and who are responsible for global oversight of the institutions. During those meetings, we discuss and share information, review management reports, identify red flag issues, and develop strategies to address those issues. When necessary and appropriate, I advise the CDCR leadership when a significant issue of concern should be elevated above my level for information and potential support in implementing a resolution.

***10. In addition to on-site visits, how do you ensure that the practices at prisons match the stated policies? How often are you able to visit prisons?***

The primary manner that CDCR ensures that practices match state policies is through training and auditing. The CDCR begins by ensuring staff are aware of the policies and regulations and then routinely reviews for compliance.

As mentioned previously, CDCR has numerous tools to assist in ensuring that institutional practices mirror departmental policy and I rely heavily on the broad base of experience of the Deputy Director, Associate Directors, headquarters support staff and mission based staff to provide constant review of those monitoring tools. When unusual or significant incidents arise, it is the expectation that the circumstances surrounding the incident and response to the incident are carefully and thoroughly evaluated. At times, during that evaluation, it is determined that practice did not meet policy. When that occurs, immediate corrective action is implemented and we evaluate for whether the lack of compliance was isolated or more systemic. If necessary, policy changes will be implemented and/or training will be provided statewide.

The DAI management team and I have frequent conference calls and meet quarterly with Wardens to discuss prison operations and policies. Those interactions allow the Wardens the opportunity to discuss the operational aspects of departmental policies and share best practices and afford me the ability to ensure that the Wardens and management team are clear about the policies and expectations.

I make every effort to visit the prisons on a routine basis and frequently drop in when I am near a prison for a meeting. I attend major opening of programs and significant accomplishments of the institutions, such as the California Institution for Men's Underwater Welding Program Graduation and the Female Residential Multi-Service Center program opening in Sacramento. I also have made it a priority to visit prisons undergoing fundamental changes in policies, for example Ironwood State Prison, Chuckawalla Valley State Prison, and CSP-Solano in preparation for the implementation of the Adult Programs and Institutions Divisions' Proof Projects. From my years of experience, I know it is always best to see first-hand an area of progress to understand the challenges the institutions face or the great works they have undertaken and I take every opportunity I can to visit the field.

**11. *How do you ensure that employees are informed about department policy changes? How do you determine if training is needed to implement a specific change?***

The dissemination of complete and accurate information in a large organization is always a challenge, but CDCR has established and proven methods for wide distribution of information. The decisions on the most efficient method to inform staff of policy changes are made on a case-by-case basis after considerable discussion with the management teams and after thorough review and analysis that the policy is necessary, lawful and appropriate. When deciding how best to inform staff and inmates of changes, one must weigh the complexity of the information against the resources selected to share the information, as CDCR must be mindful to utilize the most cost-effective method to distribute information with public and institutional safety always being the foremost factor of consideration.



Any change to regulations listed in the California Code of Regulations, Title 15, or the Departmental Operations Manual (DOM) are formally announced via a "Notice of Change to Directors Rules" or "Notice of Change to the DOM." When these regulations are officially announced, the Wardens are provided documents for distribution to staff and inmates and are to ensure the staff are aware of the changes during Executive staff meetings and unit meetings. The Wardens are also responsible to ensure that the notices have been widely posted for inmate information and are discussed with the local inmate advisory committees.

However, the posting of notices and unit meetings may be insufficient with complex changes to departmental policy. In those cases, formalized on-the-job or classroom in-service training may be necessary and may occur prior to the finalization of the regulations. Those types of significant changes to existing policy, such as implementation of the Integrated Housing Program (IHP), would require formalized lesson plans and classroom instruction with documented proof of attendance. Additionally, local procedures and post orders are routinely updated to capture policy changes.

Other less complex changes or clarification of existing policy may be handled by less formalized and cost-efficient methods, such as conference calls, memoranda or staff meetings. Examples of training that do not require a formal lesson plan and classroom instruction would be the policy clarification that inmate visitors are permitted to wear hooded garments in CDCR visiting rooms. However, even these types of dissemination of policy changes via a memorandum are documented and tracked by the In-Service Training offices of the institutions to document that staff have been informed and provide a mechanism to capture information related to any employees who did not receive the training.

I remain committed in striving to have a Department of professional employees who are well informed, well trained and understand both the departmental policies and the underlying rationale for the policies. I am proud of the experience level and knowledge base of CDCR employees and the professional training program the organization has developed with the assistance of formal curriculum designers, subject matter experts and certified instructors. I will continue to be open to ideas for training opportunities and provide consistent interaction with my management team to seek their feedback to ensure that they understand the policy changes moving forward and inquire how best we should keep our employees, inmates and the community informed.

**12. *The department received \$52.8 million last year for recidivism-reduction efforts and is receiving \$146 million in the current budget for similar types of efforts, including additional days of visiting. What role do you play in evaluating progress?***

I believe that one of the most important roles I can play as the Director, DAI, is assisting in the culture change from an organization focused firmly on ensuring security without full regard for the impact of programming to one also focused on ensuring inmates have access to meaningful rehabilitative training in a secure environment. Besides my commitment to safe programming, I believe inmate visiting is a vital aspect of the rehabilitative model.

In FY 2006-07, the Recidivism Reduction Strategies Budget Change Proposal funding was included to expand visiting by an additional day at ten male institutions. In addition, the Chowchilla Family Express was established at two female institutions, and provides bus transportation for inmate families once a month at CCWF and Valley State Prison for Women (VSPW). In FY 2007-08, the visiting program was expanded to an additional ten institutions. As of January 2008, 22 prisons participate in either the Third Day Visiting Program or the Chowchilla Family Express Program.

As the Director of DAI, one of my responsibilities is to ensure that programs offered to the inmate population are being fully maximized in all adult facilities. I am responsible for overseeing that the Wardens ensure every inmate assignment is filled and that inmates are actually present in their assignments. This is no simple task due to the complexity of inmate movement and the impact of program closures on institutions due to security, medical, and program reasons. To evaluate compliance, I utilize performance tools, such as COMPSTAT, the Program Status Reports and Adult Program attendance report, and when I determine that an institution may have a protracted program closure, I follow-up with the Associate Director and the Warden to provide mentoring and support in an attempt to return the program to full operations when safe to do so.

My role is also to demonstrate and model my commitment to the success of rehabilitative programming. This requires that I ensure we address barriers to success as they arise when implementing new programs, such as being actively involved in the initial planning for the Proof Project at CSP-Solano or assisting in the expansion of substance abuse programming throughout our system. It is also my responsibility to demonstrate on-site support to these programs by attending graduations and opening ceremonies whenever possible.

However, more importantly, it is my responsibility to consistently, clearly and firmly remind the employees of DAI, via the Deputy Director, Associate Directors, Wardens and institutional managers, that we are responsible to support the implementation and expansion of rehabilitative programming. Frankly, this has not been a difficult task as it



has been my experience that staff within DAI welcomes meaningful programming for inmates. The more complex challenge comes in working with institutions when violence or medical concerns affect operations and working with DAI managers to find secure, yet innovative, methods to continue to deliver meaningful programming to the populations during modified programming periods.

I have remained committed throughout my career to developing and maintaining strategic partnerships with Adult Programs staff to ensure inmates have access to programming. To this end, I have an open line of communication with the Adult Programs executives, so that I am aware of any issues affecting programming and am cognizant and supportive of planning for program expansions.

**13. *What is the status of the COMPSTAT process? Is it still being used to monitor progress? Please explain the reasons for any changes.***

The COMPSTAT process was suspended and it is being re-tooled to be less work intensive for the field and to better define measurements over a longer period. This will permit enhanced information for management oversight. The common sense logic of the COMPSTAT process provided a statistical analysis of key indicators. The process allowed executive management to identify problems, training and resource needs, inconsistencies as well as the progress made for strategic initiatives. Ultimately, it held field-level and executive management staff accountable to establish and monitor statewide performance metrics.

The Secretary moved the COMPSTAT process to the Audits and Compliance Division, from its prior organizational placement as a stand-alone office within Administrative Services, to better align statistical reviews with key audit areas. The Division surveyed executive management, as well as, field and headquarters staff directly involved in the COMPSTAT process, to determine what efficiencies were needed. Less reliance on field data collection, more reliance on existing databases, comparative analysis of three years of data instead of quarterly comparisons, and prioritization of key measurement indicators were identified in the survey. In addition, while reviewing the process, it was found institutions would interpret counting rules differently leading to incorrect data.

Under the new COMPSTAT process, the data is obtained, for the most part, from an automated system and counting is not subject to interpretation. For example, instead of asking each institution how much they paid for correctional officer overtime, the information is obtained directly from the State Controller's Office automated pay system. This same process is used for use of sick leave, etc. There will be greater accuracy, less work for the institutions in collecting data, more data (three years worth or more), and more information and time to analyze the data and trends to determine if there is a problem and to identify possible solutions. With increased data, it is also easier to measure progress.

During the temporary suspension of the COMPSTAT process, data collection continued. Notably, while it was not formally required, Associate Directors and their staff continued to use the information to measure operational effectiveness. This is a testament to the value of the process for management evaluation. Everyone involved in the process understands the fundamental effectiveness of the analysis and the process has been culturally embedded into the organization. I believe it raises consciousness to problems that perhaps would not otherwise be identified and fuels professional competitiveness that advances organizational success.

Comparing key indicators from prison to prison within each mission is invaluable as a management tool. Through this process, I can identify a prison that, for example, is failing to meet time constraints on inmate appeals, exceeding its budget allocation or has an unusually high use of force compared to other like institutions. Through the COMPSTAT process, we are able to focus institutional and headquarters resources to the resolution of the problem.

In March 2008, COMPSTAT staff introduced the new counting methodology for the collection of data to executive staff. By using a standardized methodology based on a monthly calendar, which identifies when to extract data from existing CDCR systems, COMPSTAT has been able to collect data on the same day each month to ensure consistency in collection. Each business area that collects and maintains the data for their line of business has set the optimum day of the month for retrieving data from their respective system. Additionally, a COMPSTAT intranet collaboration site has been developed to share COMPSTAT data with CDCR management statewide. The new site will contain all previously collected data by the COMPSTAT unit, the new schedule for COMPSTAT meetings, various data reports used to populate the new COMPSTAT instrument, and many other features designed to share COMPSTAT data not only internally, but eventually via the internet as well.

Executive COMPSTAT meetings have been held with Adult Operations and Adult Programs managers as well as the Secretary. Formal field level COMPSTAT meetings will resume in June 2008, first at the Warden's meeting on June 11, 2008, in which the Wardens will be presented with the three years worth of COMPSTAT data collected, the new data collection process and intranet collaboration website.

The Department remains committed to this process, and I personally believe the improved COMPSTAT process will provide a more effective and efficient organizational statistical barometer of field operations and accountability of staff and myself.



**14. CDCR has two training programs known as the Ethical Decision Making Model and the Leadership Development Program. How do you follow up to determine whether employees who received the training are using it effectively? Approximately how many employees have been trained? What training exists for wardens and associate wardens?**

As a Warden, I met with staff who had returned from the training to discuss what they had learned and how they intend to implement the training in their role as a manager and leader for the organization. During the Warden's meetings, it has been confirmed that each Warden is following up with staff who have been trained to discuss the training and how it benefits the individual and the organization. As a leader, I utilize ethical decision-making concepts on a daily basis as I make decisions and recommendations regarding complex policies and issues. I have also taken the five leadership practices emphasized in the Leadership Development Program to heart and find ways to incorporate them into my personal leadership style.

To date, over 8,500 employees have attended the Ethical Decision Making Model training due to the commitment of the Ombudsman's Office under Ken Hurdle's leadership. Besides the training provided on-site to the individual institutions, the Ombudsman's Office attends each of our quarterly Wardens' Meetings and provides periodic updates on the status of the Ethical Decision Making Model training. This Model has been used on many occasions to address complex problems facing the organization and the Model will be applied in the future training to address a tangible institutional problem facing the local management teams.

While serving as the Deputy Director of Adult Institutions, a very serious incident occurred at one of our institutions. Following the incident, the use of the protective vest became a systemic debate within the CDCR. The issue was which classification of staff should wear the vest and when and where they should wear it. We utilized the Ethical Decision Making Model to refine the Department's protective vest policy.

With co-leadership by the Director of Adult Institutions and the Office of the Ombudsman, we created a multi-divisional taskforce to evaluate the Department's protective vest policy. Because of the serious incident that occurred, some stakeholders felt that every person that worked in correctional institutions should be issued a vest. Others felt that the vest should be optional wear as the individual employee felt appropriate. The lead Ombudsman facilitated our review in a neutral, non biased fashion helping us to identify such challenges as; fiscal constraints, manufacture and delivery of vests, prioritizing the wearing of the vest while working with certain custody of inmates, mandating the wearing of vests by correctional peace officers and, in some housing units, providing vests as needed by staff.

Through ensuring the involvement of various divisions within our Department, receiving feedback from users in the field and interacting with control agencies, we were able to make a variety of difficult decisions utilizing the ethical decision-making model.

To date, 896 departmental employees have attended the Leadership Development Training and I have repeatedly received positive feedback concerning the training. As the Director, as when I functioned in other leadership roles throughout the years, I visibly show my support for the leadership training through my own participation, support of my staff who participate, and by finding ways to incorporate the learning into daily practice.

Throughout my career I have been focused on individual and organizational leadership development and training. I have mentored young managers and attended Leadership conferences as a participant and as an instructor. As the organization continues to evolve due to retirements, it is critical that we develop our future leaders to be prepared to step up to executive leadership roles.

Wardens receive training at quarterly Warden's meetings, conference calls, memoranda and one-on-one mentoring from the respective Associate Directors. They are mentored throughout their executive careers on their respective roles, and they attend Leadership Development and Ethical Decision making training. For those Wardens who may have had less experience at the Chief Deputy Warden level, we hire retired Wardens and executives to provide on-site training and development. I am also reviewing the possibility of other organization training, such as provided by the NIC, on formalized Warden training.

Associate Wardens (AW) also participate in the Leadership Development Program and Ethical Decision Making training. They receive constant training from the Warden, Chief Deputy Warden and other AWs. The very nature of the complexity of issues that AWs face requires constant and consistent feedback to ensure the AWs are aware of policies and procedures that govern their decision-making. Additionally, AWs do attend formalized training based on their assignments, such as health care AW seminars, budget training seminars, classification seminars, etc.

### **Assembly Bill 900 and Population Management**

*Last year the Legislature approved AB 900 (Solorio and Aghazarian), the Public Safety and Offender Rehabilitation Services Act of 2007, Chapter 7, Statutes of 2007. This act initially was intended to finance construction of space for 16,000 state inmates and create a broad range of performance measures that the department must meet. It was also designed to relieve overcrowding which has prompted CDCR to fill gymnasiums with inmate bunk beds.*



**15. *What role do you play in monitoring implementation of AB 900?***

The passage of AB 900 provided additional resources to the CDCR to increase housing capacity. The increase in capacity creates a safer environment for inmates and elicits an environment more suited for rehabilitation. Phase I of AB 900 establishes 13 benchmarks the CDCR must achieve in order to receive additional funding for Phase II.

My role in ensuring CDCR achieves the 13 benchmarks comes in several different forms. I have taken a consultative role with Facility Planning, Construction and Management Division (FPCMD) as they plan and develop the infill bed plan. Prior to rolling out the infill bed plan, DAI staff worked collaboratively with FPCMD to reconcile design and overcrowding capacities at all prisons. The infill bed plan focuses on the inmate bed gaps in the CDCR capacity. That reconciliation is the foundation for the CDCR's infill bed plan. Additionally, I have taken a consultative role with the Division of Reentry and Recidivism Reduction as they develop strategies for establishing reentry facilities.

I have worked with DARS to meet AB 900 Benchmark 5, which is to ensure prison institutional drug treatment slots average at least 75 percent participation over the previous six months. In fact, we have increased this participation to 94 percent. To meet this benchmark, I oversee the Weekly Beds Meeting that focuses on statewide population issues. Staff representing all divisions within the CDCR attends the Weekly Beds Meeting. Each division identifies areas that may affect their division and as a group, work collaboratively to develop appropriate solutions. The Weekly Beds Meeting actively focuses on filling all institutional drug treatment slots. Additionally, I work with Wardens to ensure effective management of modified programs and maximum inmate participation in drug treatment.

I have worked collaboratively with the DEVOP to meet AB 900 Benchmark 6 in that CDCR has implemented an inmate assessment at the RCs, and has used the assessment to assign inmates to rehabilitative programs for at least six consecutive months. On February 14, 2008, I signed a memorandum directing institutional records staff to place the completed COMPAS assessment in the subject inmate's Central File. Classification Staff Representatives from CSU utilize this assessment in endorsing the inmate for transfer. Inmates identified as having a high risk to recidivate and a high need for substance abuse treatment, are transferred to an institution that has a drug treatment program. Inmates with educational and vocational needs will be further evaluated for appropriate program placement at their initial classification review at the receiving institution. My staff continues to work collaboratively with DEVOP staff to develop strategies to assess all inmates in RCs and place them in programs based on that assessment.

I have taken an active role in Benchmark 10, developing and implementing a plan to address management deficiencies within the Department and ensuring a minimum of 75 percent of the managerial positions are filled for at least six months. Since becoming the Director of DAI, I ensure all vacant, key managerial positions are filled expeditiously. Currently, all Associate Directors within the DAI, are appointed to their positions.

I play a key role in Benchmark 11, increasing full-time participation in inmate academic and vocation education programs by 10 percent from the levels of participation on April 1, 2007. Through the classification process and the management of modified programs, institutions can ensure the placement of inmates in rehabilitative programs and thereby maximize the hours spent in these programs.

I am very proud in the accomplishments of the California Out-of-State Facilities (COCF). I oversee the COCF and work with COCF to meet their goals outlined in AB 900. At the end of April 2008, the CDCR housed over 3,700 inmates in out-of-state facilities in Arizona, Oklahoma, Tennessee and Mississippi. The housing of these inmates has a direct correlation to the reduction of inmates housed in temporary, non-traditional beds such as gymnasiums and dayrooms. Through these strategies, DAI has been able to again use gymnasiums for recreation. Currently at High Desert State Prison (HDSP), a Level IV 180-design facility, positive programming inmates are now able to use the gymnasium to play basketball and for other recreational activities. CSP-Solano has also converted a gymnasium from housing 225 inmates to providing space for recreation. Additionally, Salinas Valley State Prison deactivated all four gymnasiums, which helped mitigate severe staffing shortages and the reduction of involuntary overtime.

As the Director of DAI, my role in monitoring AB 900 is also advisory for other divisions that may be taking the lead in various projects that pertain to construction and capacity. While my role in ensuring placement of inmates in rehabilitative programs is more direct, I will continue to work with other divisions as we place inmates in rehabilitative programs via the classification process, move inmates from temporary beds as contracted and permanent bed capacity is increased, and ensure maximum usage of COCF thereby allowing further reduction of temporary, non-traditional beds.

***16. According to the Legislative Analyst, the Governor's budget proposes to change the use of \$2.2 billion in lease-revenue bond funding already authorized by the Legislature under this law. Specifically, the Administration proposes to divert this funding to the federal court-appointed medical receiver overseeing inmate medical care instead of using the funds to construct infill beds at existing prisons and reentry***



***facilities, as originally approved by the Legislature. What direction have you received on how many beds you can expect, and where they will be located?***

The Governor's Budget does propose to redirect \$2.5 billion from AB 900 authorized lease revenue bonds from infill and reentry projects to the Receiver for use in building health care facilities.

During AB 900 development, the Receiver did not present formal plans to construct health care facilities to meet the medical needs of the inmate population. Without the plans, \$1 billion was set aside in AB 900 as a placeholder for the construction of medical beds. It was clear that the \$1 billion would be insufficient to address all of the Receiver's needs and additional funds would be required as health care projects become more concrete.

With the Receiver's projects now defined, and instead of seeking additional lease revenue authority and increasing debt obligation, \$2.5 billion identified from Phase II of AB 900 shifted to the Receiver.

The Department has several milestones to meet before moving forward with Phase II. The Administration is not abandoning plans for Phase II construction for infill and reentry. CDCR will move forward with Phase II and seek additional authority for these projects to replace the funding transferred to the Receiver's projects.

The specific infill and reentry projects in Phase I or II remain intact regardless of the \$2.5 billion funding shift to the Receiver as noted above. However, specific projects may be modified as further evaluation of space, infrastructure capacities, construction costs, and other limitations or considerations are analyzed by FPCMD staff. Appropriate notification to the Legislature and public will be initiated when these projects are further defined and in the case of reentry, when competitive contract processes are completed.

***17. What progress has the department made in reducing the so-called bad beds now in gymnasiums and dayrooms? How has the population-management issue changed since you were confirmed as a warden in 2002?***

The CDCR has been able to reduce the housing of 4,003 male inmates in non-traditional beds in less than one year. This successful reduction occurred with the movement of inmates to COCF and alternative sanctions for parolees. On June 27, 2007, the male inmate population reached 161,259, with 395 male inmates housed in COCF and 18,196 male inmates in non-traditional beds. In comparison, on April 30, 2008, the male inmate population decreased to 159,090, with 3,674 inmates

housed in COCF. Additionally, this month, I will deactivate an additional 614 non-traditional beds, further reducing the number of non-traditional beds to 14,193.

As CDCR continues to move inmates to COCF and the inmate population remains steady, we will continue to reduce the number of inmates housed in non-traditional beds.

I am working with the prisons as they deactivate non-traditional beds to ensure the inmates transfer to traditional housing that is appropriate for rehabilitative efforts. For those institutions that have completely deactivated housing in gymnasiums, I am working through my Associate Directors to ensure gymnasiums are used, or plans developed to ensure the use of those gymnasiums, for recreational/rehabilitative programs. A part of that plan will be to determine appropriate staffing levels to maintain safety of the inmates as they utilize those gymnasiums.

It is important to note that at the end of calendar year 2002, the female population reached 9,797 and the male population escalated to 149,857. On April 30, 2008, the female population further increased to 11,351 and the male population to 159,090. That is an increase of 10,787 inmates in approximately five and a half years. Also noteworthy are the deactivation of the NCWF, which housed 750 female inmates, and the activation of Kern Valley State Prison, yielding approximately 4,366 male beds thereby reaching an overcrowded capacity of 190 percent of design capacity. Overall, the inmate capacity increased by 10,787 as opposed to the increase in bed capacity of only 3,616.

Since my confirmation as Warden of NCWF, inmate population management has become much more complex. The establishment of *Coleman*, *Armstrong*, *Clark*, and *Plata* class members has created additional considerations for inmates that have further limited inmate-housing options. Additionally, since 2002, we have placed Level III inmates in dayroom housing and triple bunk beds in gymnasiums. This is not a desirable correctional practice.

Since my confirmation in 2002, the DAI works more collaboratively with the Division of Correctional Health Care Services to establish appropriate treatment capacity for those offenders needing mental health care at the Correctional Clinical Case Management System (CCCMS), Enhanced Outpatient Program (EOP), Psychiatric Services Unit (PSU), and Mental Health Crisis Bed (MHCB), levels of care. This involves not only identifying bed space but also prison locations in which professional mental health staff can be recruited to work. It also involves limiting the numbers of transfers per week of these offenders to these levels of mental health care and keeping in compliance with various caps on populations at certain sites that have been established by the federal courts. The magnitude of these complexities in managing our population did not exist in 2002.



It is only through collaboration with all stakeholders and working as a CDCR team that we will be able to house inmates in safe environments while providing the rehabilitation necessary to reduce recidivism.

**18. The department is now assessing new inmates as they arrive at prison reception centers. It is using a screening tool known as Compas (Correctional Offender Management Profiling for Alternative Sanctions) to determine the needs of an inmate, such as whether he or she needs a particular education or treatment program. At what point will this assessment be integrated into the inmate classification system that determines whether an inmate is sent to a higher- or lower- security setting? Will the assessment process be standardized throughout adult prisons?**

Adult Programs led the introduction of the automated risk and needs assessment tool, COMPAS, within the RCs, with the assistance of staff from Adult Operations, including DAI. Adult Programs adopted a phased, incremental approach to implementation of the COMPAS. They began with four RCs in June 2007, and by the end of that year transitioned the program to the remaining eight RCs.

Currently Adult Programs is able to assess approximately 100 inmates per week in each RC, focusing on new commitment inmates.

In February 2008, I directed DAI staff to use the COMPAS results when making placement decisions. Adult Programs staff completed the assessments and DAI staff filed a paper copy of the data stored in the COMPAS database in the inmate's Central File. Thereafter, DAI staff that review inmates for transfer endorse an inmate that have a high risk to recidivate and a high need for substance abuse treatment to a prison with a substance abuse program, commensurate with the inmate's security level.

This is only the beginning of using the risk and needs assessments for placement in rehabilitative treatment programs. In the fall of 2007, James E. Tilton, Secretary, approved the internal reorganization of DAI staff. That reorganization included the establishment of the Program Support Unit and the augmentation of staff to the CSU. The CSU has been able to dedicate a Correctional Counselor III to focus on integrating the COMPAS risk and needs assessments into the classification process. Additionally, Mr. Tilton approved two Correctional Counselor II positions to focus on AB 900. Through these strategies, DAI has been able to collaborate more efficiently with Adult Programs.

One benefit of this collaboration resulted in the inclusion of the COMPAS risk and needs assessment information into the Institution Staff Recommendation Summary (ISRS) and the Readmission Summary (CDCR Form 816). The ISRS and CDCR Form 816 are the documents used in the decision-making process when DAI staff are transferring inmates

from the RC to a mainline institution. The ISRS is the assessment tool the CDCR uses when determining placement in a prison and placement in rehabilitative programs. The ISRS reviews an inmate's education and vocational needs, history of substance abuse, work history, and other criminogenic factors. Including the COMPAS risk and needs information into the ISRS will now fold risk and needs assessments, through science, into our decision-making process.

It is important to note that the CDCR has been doing assessments of inmates for many years to determine appropriate placement of inmates into prisons and programs. Testing inmates in RCs with the TABE determines their reading level and overall educational level. The captured TABE results in the ISRS are to determine inmate placement in education and/or vocational assignments at institutions. Additionally, inmates receive a mental health assessment at RCs. That assessment places inmates in mental health programs. Medically assessing inmates ensures placement in an institution that can better meet medical needs. Inmates are assessed for developmental, as well as physical, disabilities in RCs. Additionally, the Inmate Classification Score System (ICSS), a scientifically validated process, assesses an inmate's potential for misconduct.

The COMPAS risk and needs assessment will not replace the ICSS when determining security level. The COMPAS assessment tool is not designed to determine an inmate's custody. Utilizing the assessments mentioned above and incorporating an inmate's COMPAS risk to recidivate and rehabilitative needs, will ensure an inmate's placement in an institution that can meet their security, mental health, medical, disability, and rehabilitative needs.

### **Gangs, Violence, and Contraband**

*Racial segregation has been used in California prisons as a way to separate prison gangs and reduce violence. However, in 2005 the U.S. Supreme Court ruled that the state could segregate prisoners by race only in rare instances. In the wake of the decision, the state announced a legal settlement phasing out segregating inmates along racial lines.*

**19. What progress has the department made toward implementing the settlement? Scott Kernan, in his responses to the Senate Rules Committee in February indicated that by July 2008 you will have coded inmates as to whether they can live with inmates of all races. Is that still the timetable?**

I am confident that during July 2008, all inmates at all institutions will have been assigned an Integrated Housing Code (IHC) and two institutions will begin making housing and/or bed assignments using the IHC. The Department has identified Mule Creek State Prison and Sierra Conservation Center as the first two institutions



where the IHC will be implemented beginning July 1, 2008. Our training for staff is ongoing. I am ensuring that each inmate entering the RCs and those transferring between institutions understands our expectation in relation to integrated housing. Our regulations have been updated as of January 2008 to include the necessary sanctions for inmates who refuse to participate.

The 1995 *Garrison Johnson vs. California Department of Corrections* federal court case resulted in a 2004 settlement agreement, which the CDCR is in the process of implementing. CDCR is in the third year with Phase I nearly completed and Phase II and Phase III planned for the next two years.

Phase I had multiple components to it including the IHP policy development, curriculum development for staff training, the dissemination of information about the program to staff and the inmate population, modification to the automated Distributed Data Processing System to allow the system to accept the IHC and inmate coding. Phase I currently has employees interviewing inmates and reviewing the Central File to assign an IHC to each inmate. Phase I coding began in the RCs during November 2006, and in General Population (GP) institutions in February 2007. The plan is that all inmates will be assigned an IHC by July 1, 2008. As of May 1, 2008, more than 80 percent of the of statewide inmate population were coded.

We remain on schedule for Phase II, the integration implementation phase. During this phase, inmates will be assigned to cell or bunk partners based on the totality of their case factors, including IHC. These factors may include gang affiliation, medical/mental health concerns, enemy concerns, and other similar factors.

As the implementation progresses, the results will be reviewed for issues and concerns and the decisions necessary to proceed with other institutions will be made. Other Phase II institutions will be GP housing for Level I and Level II inmates.

Phase III is designated as a continuation of the integration implementation phase. During this phase, staff will begin using the IHC to make housing/bed assignments for inmates currently housed within the higher security levels. Phase III is scheduled to begin after July 1, 2009; and only after a careful review of the effects of the IHP at all other institutions has been completed.

The CDCR anticipates a positive impact on the inmate population. Many inmates want to participate in programming in a productive and safe manner. The integrated housing expectation, with sanctions for those who refuse to cooperate, will be known throughout adult institutions and will be enforced. Through consistent application of this expectation and the practices that follow, it is anticipated that the vast majority of inmates will cooperate. CDCR expects gang activities will be curtailed and that there will be some incidents by hardened and gang-associated inmates. Custody practices will continue as

normal, with the possible temporary adjustment in converting some housing units into more controlled housing for those inmates who refuse to cooperate with IHP expectations.

**20. What is CDCR's prison gang strategy, and how are you coordinating with local law enforcement? As a career CDCR employee, what tools would you want to diminish the influence of gangs as much as possible?**

Management of our gang population continues to be one of my most serious concerns. CDCR is committed to assuring every inmate is afforded an opportunity to be housed in a secure environment free from fear, intimidation, and physical harm caused by members and associates of prison gangs and disruptive groups. It is our goal to eliminate or significantly reduce criminal activity involving prison gangs and disruptive groups by focusing on patterns of criminal behavior and the organized structure of the gang. We cannot underestimate the gang influence in our prisons and communities. Street and prison gang influences frequently affect the operations of institutions; new and diverse strategies are constantly being evaluated and implemented to contend with their impact within the Department.

The CDCR's gang management strategy includes the identification and validation of gang-affiliated offenders, tracking and monitoring their conduct, taking preventative action, and applying sanctions when the inmates are found to be involved in illicit or unlawful gang activity.

Additionally, the CDCR provides gang identification and gang related training for CDCR personnel at the Basic Correctional Officer's Academy, in the institutions, and to personnel from other jurisdictions.

Through the Office of Correctional Safety (OCS), the DAI has fostered a solid cooperative relationship with numerous outside law enforcement agencies, most notably: Federal Bureau of Investigation (FBI), Los Angeles Police Department, Los Angeles Sheriff's Office, San Diego Police Department, and the Drug Enforcement Administration. Through these relationships, OCS and DAI are able to:

- Conduct regular training of, and with, these agencies;
- Engage in joint community gang sweeps;
- Provide support to local agencies by sharing intelligence and facilitating training;
- Parole Agents in various communities act as liaisons, provide training, and participate in gang sweeps;
- Host an annual gang conference with more than 700 national law enforcement officials in attendance;
- Provide expertise to the nation regarding the California gangs and their influence in other states;
- Support the FBI in securing RICO indictments of gang members;



- For the past 30 years, CDCR has conducted/participated in the monthly California Gang Task Force meetings.

Gang members need the ability to safely disassociate from the gangs and the Department facilitates this through our debriefing process. Known validated gang members and associates are placed in the Transitional Housing Unit (THU) while they begin the process to disassociate their ties from the gang(s) to which they once belonged, and then be safely evaluated for their ultimate transition back into a GP setting. This process is necessary to protect both the safety of the participating offenders, as well as to protect the GP inmates where these gang-dropouts will be transferred and ultimately housed.

Phase I of the debriefing process provides an opportunity for the offender to make a first formal step towards moving away from what in most cases has been a lifetime of illegal gang activity. Therefore, the success of the first phase of the debrief process can be measured by giving an offender a method of breaking away from the cycle of gang violence and activity. If the offender who chooses to disassociate himself from the prison gang has been active and in good standing with his/her prison gang, usually he/she is able to provide staff with good, real-time intelligence regarding their gang's activities.

Phase II of the process allows for a period of staff observation and a time for the offender to adjust back into day-to-day prison operations and a group yard setting. This observation/adjustment period helps to ensure that an offender will be able to program successfully with other offenders of all races and ethnic groups as well as offenders who are disassociating themselves from other prison gangs. At this stage of the process, the offender is moved into either the THU at Pelican Bay State Prison (PBSP) or Integrated Yard Program (IYP) at Corcoran State Prison.

During the observation phase, staff monitor the offender's interaction with other similarly situated offenders in a tightly controlled setting. Offenders who successfully complete both phases of the debriefing process will have safety concerns from their former gang; therefore, they will not be able to program in a GP setting and may require housing on a Sensitive Needs Yard (SNY). For the former prison gang member, living on an SNY can be challenging, especially if they have been housed in the SHU for several years.

The THU and IYP programs are designed to mitigate the transitional stresses and ease the offender back into a GP setting. This is accomplished through personal growth development training, anger management, conflict resolution skills and other academic and physical education.

The Behavior Management Unit (BMU) is being implemented as another alternative to segregate disruptive influences from our GP offenders. Offenders that have demonstrated violence-prone behavior, or have been involved in repeated acts of

institutional disruptions/riots, "active" gang type behavior, or who have received repetitive Rules Violations Reports (RVR) for disruptive behavior may be evaluated for participation in this new approach to managing offenders with behavioral problems.

Offenders placed into a BMU are essentially maintained together in a GP-assigned building and in normal cells; however, their privileges and their ability to possess personal property items are significantly restricted upon their initial placement into the program. Offenders assigned to a BMU are expected to participate in formal violence/anger management education programs and submit to mandatory drug testing. Based upon each offender's level of participation in the program, they have the ability to earn their privileges back and return to a full GP setting. Offenders designated to participate in the BMU program will graduate through three phases of the program, with each phase providing greater privileges and program opportunities outside of their cells, with the final phase being return to GP.

Offenders who successfully graduate from the program are ultimately released back to the GP setting; however, offenders that elect to not participate and modify their behavior will be evaluated for potentially more restrictive housing within the SHU setting.

According to the preliminary evaluation of the BMU pilot program at HDSP, which was prepared by the Adult Research Branch for the CDCR Office of Research, the BMU program was effective in reducing recalcitrant behavior. Of the 137 inmates placed in the program, 76 successfully completed the program; representing a 55 percent success rate. The inmates that completed the BMU program had almost 6 times more Rule Violation Reports before entering the BMU than after completing the BMU program. The BMU allowed non-disruptive inmates the ability to program with fewer interruptions. There were 11.4 percent fewer RVRs issued institution-wide after the program was implemented, suggesting that the BMU program may reduce the number of disruptions to which inmates within the GP units are subjected.

One gang reduction strategy currently under evaluation is the Short Corridor at PBSP SHU. This housing protocol has been established to reduce or restrict the ability of identified high notoriety prison gang members from communicating and issuing instructions to other gang members throughout the Department. Another gang reduction strategy is the use of Strike Teams who conduct in-depth searches and investigation into gang activities and/or planned violence. These strategies have caused significant impact by disrupting gang activities and assisting in validating active disruptive group members.

The prison gang strategies that I have described in the above paragraphs need further evaluation to ensure that evidence is gathered to determine their long-term effectiveness. Additional staff resources are needed to conduct these studies and to expand the BMU, THU, and gang debriefing and validation units. These are some of the tools that I believe the Department can utilize to diminish the influence of gangs.



**21. *Department officials have warned about the growing security threat from the smuggling of mobile telephones into prisons. How are you addressing the problem of inmates' access to cell phones?***

The CDCR in the last few years has been plagued by cellular telephones being introduced onto institutional grounds and into the hands of the inmate population. Inmates have been able to make unmonitored and unauthorized telephone calls to the public that may have resulted in dangerous criminal activities being organized without the institution having the ability to monitor or terminate these contacts.

A recent 2007 cellular telephone investigation at CSP-Solano identified a supervising cook (civil servant) selling cellular telephones to inmates for \$100 per phone. Although terminated from employment, the cook was direct in his admission to engaging in this nefarious activity.

Cellular telephones, in the hands of criminals whom are confined to prison, are of nationwide concern in the criminal justice system. The realities of this concern were evidenced in May 2006, when explosive violence erupted in the Brazilian capitol of São Paulo. From their prison cells, the leaders of a prison gang ordered, with the use of unmonitored cellular telephones, attacks against law enforcement personnel and the São Paulo's mass transit system. The law enforcement personnel were attacked in their cars, police stations, homes, and at their off duty locales. These attacks killed an estimated 200 people. The CDCR is looking at every viable solution to alleviate such an occurrence here in California. We will make every attempt possible to reduce and eventually eradicate an inmate's access to cellular telephones.

In December 2007, I established a Warden's Advisory Group (WAG) to specifically address communication contraband, including cellular phones. This group is comprised of experienced Wardens from a variety of prisons and headquarters personnel, and is tasked with providing recommendations on both short term and systemic remedies on how to stop the introduction of cellular telephones into the prisons. The WAG has focused on three main areas of concern aimed at curtailing unauthorized communication devices: 1) entrance security; 2) technology for detection of communication devices; and 3) legislation criminalizing the introduction of unauthorized communication devices into our prisons.

The group's initial focus is on "quick roll-out" recommendations that can be implemented without the need for regulatory changes. In order to determine the Department's current practices regarding cellular telephone detection and institutions' procedures and practices, a twelve-question assessment instrument was developed. Each institution was asked to appoint a contact person responsible to complete and return this document. A review of the compilation of returned answers indicated widespread variance in the daily practices of processing the ingress and egress of CDCR

employees working within the secure perimeter of the institutions, as well as in the offense that an inmate is charged with when discovered with a cellular telephone. After reviewing the data gathered, four areas were targeted for immediate improvement and standardization:

- Clear and concise signage posted at all entrances into the secure area.
- Development and implementation of a wireless communication device accountability procedure at all institutions. This procedure would include a system of accountability for any authorized device entering and leaving the secure perimeter.
- Standardization of the existing procedures for employee personal property allowed within the secure perimeter and the requirements to search containers staff are authorized to bring into the institution.
- Standardization of the division of offense charged on the RVR for inmates found to be in possession of a wireless communication device.

The above recommendations will provide a low cost, jump-start to decreasing the introduction of wireless communication devices into secure perimeters and the institutions. These proposals are currently under discussion within the DAL. The long-term solution may require major expenditures for the purchase of additional metal detectors, as well as conveyor-style x-ray machines. As these recommendations are vetted through management and final decisions are made, further action will be implemented.

***22. Efforts have been discussed to strengthen the inspection of items being brought into prisons by visitors and employees. What are you doing to address the continuing problem of inmate access to illegal substances?***

My vision for our Department includes promoting an environment that establishes accountability, embraces efficient and effective state-of-the-art methods for conducting business, is legally compliant, and fosters the health and safety of its employees, visitors, offenders, and surrounding communities.

As previously discussed, I have established a WAG to develop alternatives to keep contraband (and, in particular, cellular phones) out of the institutions. Additionally, we are in the process of redirecting two positions (Facility Captain and Associate Governmental Program Analyst) to reinstate the departmental Technology Transfer Committee (TTC). The Department believes that it is of critical importance to reestablish a process that identifies departmental problems and then develops performance specifications and an evaluation process to identify the best security systems available to facilitate our needs. In the interim, prior to the reestablishment of the TTC, we are relying upon the National Law Enforcement and Corrections Technology Center, which is a subset of the National Institute of Justice, to provide this



technology assessment process for the Department. We are currently evaluating walk-through metal detectors and conveyor X-ray machines to facilitate our needs.

Some of the other processes we have been employing to intercept and prevent the introduction of contraband into the institution are:

- Drug detection dogs are used at entrances at irregular intervals.
- All incoming packages for inmates are x-rayed and searched.
- Contract vendors are being utilized for inmate quarterly packages as opposed to inmates' families sending packages in.
- The "blind" package process is used to ensure that the specific identity of the recipient of a package is not known to the vendor.
- In addition to the vigilance of the assigned custodial staff, video cameras are used in visiting areas to detect the transfer of contraband from visitors to inmates. All inmates are searched before returning to the security area after visits. Those suspected of carrying contraband are placed on security watch.
- Criminal cases are filed with the local county District Attorneys on drug cases involving inmates, visitors, and occasionally staff members.
- The Investigative Services Units (ISU) at the institutions and local law enforcement agencies collaborate on search warrants involving visitors and staff.
- The ISU and mailroom staff continuously monitor correspondence for indication of drug smuggling. Investigations are ongoing within institutions for drug trafficking among the inmate population.
- There is a regular rotating schedule of security audits conducted at all institutions where procedures and operations are inspected and observed by headquarters' staff, the Office of Audits and Compliance, as well as ongoing monitoring and auditing of security practices within institutions by institution staff.
- The Department regularly circulates Security Bulletins with the latest security threats identified nationwide by various law enforcement agencies.
- The OCS, Office of Audits and Compliance, local and statewide Offices of Internal Affairs, and the local ISU all function in support of drug and contraband interdiction.

### **Lockdowns and Inmate Protests**

*When violence erupts, the movement of inmates is often restricted or prisoners are locked in their cells until authorities can sort out what happened. When these restrictions are imposed, education and other programs typically are suspended or "modified." One example began in 2005 when Calipatria State Prison experienced the most violent incident since the prison opened in 1992. According to department officials, this lockdown lasted 18 months for some inmates. During this time, there was limited opportunity for educational programming.*

**23. *At what point would you expect to be notified of a lockdown? Who decides when to resume normal programming? CDCR has been criticized for locking down too many for too long instead of seeking out specific inmates who cause disturbance. What is the current CDCR policy?***

Prisons are required to report to their respective Associate Director, the Deputy Director and to me telephonically and via a Program Status Report when a program is modified for more than 24 hours. Prisons are then required to provide weekly update reports via the appropriate Associate Director for modified programs/lockdowns until return to normalcy. In the event that a lockdown protracted, an unlock strategy must be submitted to the Director via the Deputy Director. The Warden of the affected prison participates in weekly telephonic meetings with the Associate Director until a return to normalcy has been achieved.

The Warden of the affected institution has the authority to resume normal program following a lockdown or modified program. This provides the Warden the ability to exercise discretion and utilize options commensurate with the circumstances surrounding the lockdown or modified program with Associate Director, Deputy Director, Director and, ultimately, Chief Deputy Secretary oversight, if necessary.

Current policy dictates that modifications/restrictions to program activities shall be considered after identification of the disruptive groups, sub-groups, or individuals. The identification of said inmates must be based on the behavior that caused the consideration for the program modification/restriction, and substantiated belief that the negative behavior will continue. When determining any inmate's involvement and lockdown status, the determination must be based on the individual's documented case factors, their behavior, or upon an informed prediction of their behavior. The goal is to safely return uninvolved inmates back to normal programming as soon as possible.

My almost 29 years of service with the CDCR has been spent in adult institutions. I believe I have significant operations experience, which has included managing incidents of staff and inmate homicide, riots, escapes and hostage taking. Based upon my experience, I have the ability to effectively critique the need to continue a lockdown and give direction for making modification to the program that has been developed by on site prison staff. I take the responsibility for staff and inmate safety extremely seriously. I will ensure that we take reasonable risks to return offenders to their full access to programs.



***24. When inmates, in January 2008, conducted a work stoppage at California State Prison, Solano, hundreds of prisoners were given disciplinary notices. What role do you plan in determining the safest and most effective way of handling such work stoppages, and what is the best way to prevent them from occurring in the future?***

My role as Director, DAI, in an incident such as this would be to review information received from the involved institution with the Warden, Associate Director and the Deputy Director, participate in briefings relative to the situation, and to provide guidance and assistance when necessary to help achieve the return to normalcy.

The first step in preventing this type of incident from occurring is to ensure that Wardens are trained and have experience in the prevention of disorders such as the one referenced. Moreover, instilling the expectation that Wardens and those in their charge take a proactive approach in identifying the root causes, communicating with the inmate population, identifying and removing inmates advocating or inciting the disturbance. Emphasis must be placed on monitoring the appeals process in an effort to resolve issues before they can escalate; actively participating in the Men's Advisory Council and Inmate Family Council (IFC) committees in an effort to establish open dialogue of issues of importance. Prison staff must continually monitor conditions of confinement issues such as food delivery, medical services, canteen, packages and recreational programs that, if left unchecked, could result in unrest. Providing timely and meaningful responses to inmate and inmate family correspondence, which provides intelligence for the institution, creates an opportunity to curb disturbances before they occur. Departmental policy and site specific institutional procedures also need to be evaluated on an ongoing basis.

My responsibility is to guide the Warden in this type of incident so that inmates who wish to return to their assignment are able to do so safely without fearing reprisal from other inmates.

**Family Ties**

*The value of inmates maintaining family ties was recognized in recidivism-reduction plans. However, many institutions have little or no space to process visitors who, in some cases, stand outside for several hours without shelter from sun or rain, waiting to visit inmates. Staff terminates visits when small visiting areas become overcrowded. At his confirmation hearing last year, Corrections Secretary Jim Tilton said providing access for visiting was a priority for him.*

***25. Who monitors visiting practices for consistency? Who tracks visitor processing times and the number of terminated visits? What role should associate directors for the various missions play?***

As the Director, DAI, I have overall management responsibility for the statewide visiting program, including chairing the Statewide IFC. On my behalf, the Associate Director Female Offender Programs and Services has primary responsibility to address statewide visiting practice issues. The Associate Director for each mission has responsibility for ensuring that institutions within their respective missions operate their visiting programs within departmental policy. The Associate Directors also have the responsibility for ensuring that visiting complaints related to their mission areas are addressed. Each Warden is responsible for monitoring their institutional visiting practices to ensure their visiting program operates within established departmental policy and regulations.

Wardens are responsible for monitoring their institutional visitor processing times and the number of terminated visits. The Female Offender Programs and Services mission collects visiting statistics from each institution monthly. The data collected includes the number of total and terminated visits. This information is shared with other Associate Directors to monitor the visiting programs at the prisons for which they are responsible. These monthly statistics were used as the basis to determine which prisons received the third day of visiting funded by the Reducing Recidivism Strategies. The collection of these statistics has also allowed CDCR to determine that there has been a substantial reduction in the number of terminated visits when the implementation of the Third Day Visiting Program. There has been a 66 percent statewide reduction in the number of terminated visits as of January 2008 since the visiting program was expanded.

I believe that visiting plays an important part in the well-being of our inmates. As Warden, I would tour the visiting rooms on a frequent basis, talking with visitors and observing staff interaction with them as well. It was, and continues to be, my expectation that all involved in the visiting process, including visitors, inmates, and staff understand the importance of the visiting program and the role it plays in family reunification.

In my current role as Director, I recently had the opportunity to observe the visiting program at one of our prisons. I specifically visited this site, toured the visiting rooms, met with the local IFC, and talked to visitors, after I heard about various operational challenges at the prison through members of the Statewide IFC. Some of the operational deficiencies included items in the visiting rooms in need of repair, staff not making full use of the assigned social worker professional skills, and not adhering to posted visiting hours. Through direct communication with the Associate Director, Warden, Associate Warden responsible for the visiting program and the Visiting Lieutenant, I shared my expectation and timeframes to correct the deficiencies. The issues have been corrected, but I continue to monitor the visiting program.



**26. *You meet with the statewide inmate family council and discuss issues of concern to the families. How often do these meetings occur? How would you describe your relationship with inmate family councils? How do you measure whether suggested changes are implemented at prisons?***

The Statewide IFC is a vital partner in family reunification and our rehabilitation efforts and provides valuable assistance to the Directorate in identifying and raising concerns on behalf of inmate families. My goal is to schedule IFC meetings on a quarterly basis. I have held two quarterly Statewide IFC meetings since being appointed as Director on November 5, 2007. I have a long standing positive relationship with the Statewide IFC stemming from my previous roles as Warden, Southern Regional Administrator, and Assistant Deputy Director, and I believe this continues in my current capacity as Director. I have interacted with local and statewide councils on a variety of issues and believe that open communication and proactive resolution at the local level whenever possible is key to maintaining the excellent working relationship that I enjoy with the councils.

Many of the Statewide IFC's incarcerated family members are serving lengthy terms and have known me for most of my career. I believe that the offender population sees me as a credible, caring leader, known to take a special interest in programming for inmates.

When changes to any departmental policy are implemented, a policy memo is typically issued to the field. The Associate Directors and their mission staff are responsible for ensuring that missions are operated within established departmental policy. Additionally, I rely upon feedback from the Statewide IFC and other inmate visitors to raise issues related to non-compliance of established visiting policy. The Ombudsman's Office provides feedback from their institutional tours related to visiting issues or non-compliance with set established visiting policy. I utilize statewide surveys of institutions to get feedback as operational visiting issues or questions arise. Finally, I make it a point to drop in the visiting program on my institutional tours to observe, first-hand, our visiting practices throughout the state.

**27. *What are the challenges in expanding visiting at women's prison? In a much heralded program, you have buses transport families to the women's prisons in Chowchilla on a regular basis. Are there plans to expand this program?***

The DAI has very successfully expanded visits at the VSPW and the CCWF. Since its inception, over 3,000 family members and inmates have been able to reconnect and participate in visiting through the Chowchilla Family Express Program. I had an opportunity recently to ride the one-year anniversary bus with inmate family members from Sacramento to VSPW. I cannot express how moving it was to listen to the visitors'

stories of how the bus has made it possible to see their loved ones and how, without it, visits would not be possible. The inmates also shared what a difference the program has made in their lives.

The challenge in expanding visiting at women's prisons are similar to those we face in the expansion of visiting in any prison, i.e., scheduling to ensure that we do not exceed capacity of the visiting rooms, impact on visitor processing, and staff education to ensure that staff understand the program's nexus to family reunification, community reintegration, and as a positive program incentive while inmates are incarcerated.

The California Institution for Women received an extra day of visiting as part of the Third Day Visiting Program. This expansion further exacerbated the need for a visitor-processing center at this institution. A visitor processing center is currently being constructed, and I anticipate its opening in July 2008.

Two other institutions, CSP-Solano and the California Training Facility are also in need of a visitor-processing center. We have identified a funding source (savings from the Reducing Recidivism Strategies funding) and are pursuing approval to use this funding source. Once approval is received, the Department will move forward with the purchase of the visitor processing centers from the Prison Industry Authority.

In terms of expansion of the bus program to transport families to remotely located male institutions, the Department has developed an expansion proposal to provide bus service for families to these locations; however, the Department must seek approval and resources to expand this service.



Senate Confirmation  
David L. Runnels  
Undersecretary  
California Department of Corrections and Rehabilitation  
Responses to Senate Rules Committee Questions  
May 7, 2008

**Statement of Goals**

*Under the direction of the secretary, the undersecretary of Operations plans, organizes, and directs all Department functions for adult and juvenile offenders and parolees. Recently, the Department added two other undersecretaries. Based on these additions, your position would be responsible for overseeing the two chief deputy secretaries of Adult Operations and Juvenile Justice; another undersecretary is responsible for programs, and a third for administration. In addition, you oversee the parole division, and have some oversight responsibility for the executive officer of the Board of Parole Hearings (Adult) and the general manager of the Prison Industry Authority.*

*With more than 60,000 employees, the California Department of Corrections and Rehabilitation (CDCR) is the largest single Department of state government. It is responsible for incarcerating 170,000 adults in 33 institutions and 40 fire camps and other facilities, and 2,800 juveniles in 8 facilities and 2 camps. The Department manages another 126,000 adult parolees and approximately 3,000 juvenile parolees. The stated mission of the Department is to improve public safety through evidence-based crime prevention and recidivism reduction strategies.*

- 1. Please provide us with a brief statement of your goals as undersecretary, and explain what drew you back to headquarters to take the job. What do you hope to accomplish during your tenure as undersecretary of the Department? How will you measure your success?**

My primary goal as Undersecretary, Operations, is to increase public safety through enhancing the secure day-to-day operations within our prisons, juvenile justice facilities, and parole operations statewide. My primary objective is to increase operational effectiveness by incorporating principled leadership and a back-to-basics approach in correctional practices throughout all operational areas in our Department.

It is no secret that gang influences and overcrowded conditions plague our California prison system. So much so, that on average, some segment of our prison population is on modified program status 61 percent of the time. I believe that by refocusing staff on core correctional principles, implementing focused gang management processes, and increasing population reduction efforts, the Department will then be able to change the environment and culture in which it operates and increase evidence-based programming opportunities for inmates, wards, and parolees.

**Senate Rules Committee**

MAY 07 2008

**Appointments**

There are two main reasons for my decision to return to headquarters to serve as the Undersecretary, Operations:

1. My family supports this opportunity and my desire to serve.
2. My belief that focusing on core operational practices and principled leadership, will affect the positive changes needed in California's correctional system.

As Undersecretary, Operations, I bring over 25 years of service working in a variety of capacities for the Department. Most importantly, my service as Warden of a high-security prison with pervasive gang influences and critical staff shortages, combined with my service as Chief Deputy Secretary, Adult Operations during the peak of the Department's prison overcrowding crisis and sex-offender management program implementation has provided me with direct insight into the critical operational areas where additional accomplishments are necessary. The many accomplishments I hope to achieve during my tenure as Undersecretary, Operations, include:

- Ensure effective management in operational leadership positions.
- Coordinate multiple teamwork approaches to achieving operational goals.
- Increase effective communication and staff training.
- Reduce violence against staff and inmates in our correctional system.
- Reduce overcrowding in adult institutions.
- Incorporate back-to-basics correctional practices statewide.
- Obtain cellular telephone contraband legislation with criminal penalties.
- Restructure the Board of Parole Hearing lifer process.
- Achieve *Farrell* compliance, ensuring timely remedial plan implementations.
- Develop operational "exist strategies" for court mandates.
- Enhance Prison Industry Authority's "real world training" to inmates statewide.
- Implement a comprehensive gang management strategy based on national standards and best practices.
- Ensure compliance with the legal mandates of Proposition 83 (Jessica's Law) regarding sex offender mandates.
- Safely and effectively, incorporate parole reforms.

The positive forward movement of the Department as a whole will be the ultimate measure of my success as Undersecretary, Operations. Safe day-to-day operations and successes are a team effort, manifested in strong leadership, assisted by hard working staff and peers, and fueled by the supportive executive team initially developed by Secretary James E. Tilton and now carried by Secretary Matthew Cate. My successes to date as Undersecretary would not have been possible without the principles and foundation initiated by my predecessor.



## **Reorganization and Coordination of Responsibilities**

*On July 1, 2005, the Youth and Adult Correctional Agency was reorganized pursuant to Senate Bill 737 (Romero, Chapter 10, Statutes of 2005) into the Department of Corrections and Rehabilitation. The intention of the reorganization was to improve the effectiveness and efficiency of the Departments and boards that made up the former Youth and Adult Correctional Agency.*

- 2. *How would you evaluate CDCR almost three years after the July 2005 re-organization of corrections? If the re-organization's intention was to improve effectiveness and efficiency, where has significant progress been achieved and where does the most work still need to be done? Please discuss both the adult and juvenile organization levels.***

I believe this Department's hardworking staff are resilient when it comes to managing the tremendous safety responsibilities of day-to-day operations, while incorporating the changes required in response to the Department's reorganization. As with any significant reorganization, there is a period where divisions must learn to operate under new circumstances. Overall, I believe the Department, its leadership, and its staff have successfully navigated this period with the systems for operating within the reorganization structure clearly defined and established.

To date, I believe the most significant reorganization progress achieved is in the Female and Reception Center Missions under the Division of Adult Institutions (DAI). Given the specialized populations, coordination of these two mission areas has proven successful. I continue to work with my Chief Deputy Secretary of Adult Operations to assess progress and to advance reorganization capabilities in the other three missions.

Since my return, I have actually seen greatest progress in the reorganization's ability to assist the Division of Juvenile Justice (DJJ). With the operating systems in place, the Department as a whole has the ability to consolidate resources, combine efforts, and assist areas experiencing significant need. The DJJ is currently required to reduce its lower-end population, deactivate, and close two facilities, layoff staff, gain compliance with the legal mandates of *Farrell*, and maintain safe and secure day-to-day operations and programming. As Undersecretary, Operations, I have the ability to request priority teams from the Department's legal, labor, facilities, training, and human resources divisions to assist the DJJ with these significant issues.

Additionally, coordinated efforts are beginning to take hold in the Department's interaction with the Board of Parole Hearings (BPH). To assist with board desk and lifer hearings we have combined workgroups from DAI, BPH, and our administrative contract and legal divisions to resolve hearing process issues.

After the reorganization, I believe the most work still needs to occur in our support service areas. Although the objective of consolidating the Department's support service resources was to increase efficiencies and create excellence in the support services workforce, the reorganization has actually overwhelmed the majority of the support service functions. In order to attain optimum organizational effectiveness, the Department must focus on the deficits created in these areas and present effective ways to remedy them. In acting as the Undersecretary Administration for the past few months, I can solidly attest that the Department needs to focus on reinforcing and sustaining the entry-level and analyst classifications in our case-records, contracts, budgets, and human resource units. We need to establish and provide upward career mobility within these units and incentives to staff that support this critical element, central to the foundation of a Department this size. In an organization that sustains operations on a 24/7/365 schedule, and at the speed in which support service issues arise and change, the foundation of our support services divisions is paramount to Department's overall success.

**3. *The re-organization of 2005 placed the word "rehabilitation" in the name of CDCR as a way to emphasize inmate and ward rehabilitation. If we were to visit a state prison today, what evidence would there be of a rehabilitation emphasis that would not have existed prior to the re-organization? What evidence would exist at a juvenile facility? What evidence would we find in the parole division?***

I believe we have made significant progress over the past few years in moving the pendulum from incarcerating inmates in overcrowded conditions with very little access to programs, to implementing focused efforts in rehabilitating and transitioning our inmates, parolees, and wards.

Most importantly, I believe a site visit to one of our prisons today would show evidence of a cultural change in our staff. Today, staff do all they can to keep programs operational, and they understand the value of programming for inmates. Since the reorganization, several improvement areas are operational. We have added third-day inmate visiting at several institutions, expanded vocational programs throughout the state, including the Inmate Diving Program and the Carpentry Program, and increased our focus on postsecondary inmate education. We have also placed a heavy rehabilitation focus on our female offender population, reinstating the cosmetology licensure testing at our female facilities and developing the "Bonding Mother with Baby Program" at the California Institution for Women. The more recent evidence of rehabilitation at prisons is in the use of risk and needs assessments occurring at all reception centers, and our focus on reducing our population, evidenced by 13 emptied gyms statewide.

However, as Undersecretary, Operations, I believe we need to accomplish more. One of the most crucial next steps is to teach our staff how to be proactive rather than



reactive when dealing with our inmate, parolee, and ward populations. As such, we have also started the implementation phase of our statewide back-to-basics approach to safe prisons and correctional practices through *Operation Changing Tides*. In collaboration with Adult Programs, earlier this year we began a focused effort on returning our prison environment to the type of environment where programming can occur. The back-to-basics approach focuses on removing disruptive inmates from programmable yards, introducing and rebuilding behavioral incentives and disincentives, and proactively policing the inmate population. To date, we have begun back-to-basics program at the California State Prison, Solano, Chuckawalla Valley State Prison, and Ironwood State Prison.

Evidence of rehabilitation efforts at our juvenile facilities has increased greatly in the past few years as well. Again, most importantly, I believe the culture has changed, moving away from keeping wards locked in their cells the majority of the time to a focus on full programming, and compliance with *Farrell* mandates. Smaller living units, increased staff, increased programs and services, bringing programs to wards at times that are convenient, and an increased focus on family reunification are all contributing rehabilitative factors. However, again, I believe we need to accomplish more. Initially, expediting compliance with all *Farrell* remedial plans, followed by developing a renewed focus on juvenile reoffending prevention methods. While I believe Adult Operations staff can learn a lot from our juvenile operations staff, I also believe there are some areas where they can learn together and collaborate to ensure our current juvenile population does not become part of our adult population.

Evidence of rehabilitation in our parole units includes a renewed focus on programming opportunities for technical parole violators. Most recently, there has been a significant increase in the available alternative sanctions for parolees. In addition to our reentry services and the use of COMPAS assessments, we have added additional In-Custody Drug Treatment Program beds for parolees, and increased funding to programs for Residential Multi-service Centers, Female Residential Multi-service Centers, Parolee Service Centers, Day Reporting Centers and Mental Health Services. Ongoing parole reform efforts include the development of a decision making matrix and earned discharge matrix.

**4. *In prior CDCR confirmation hearings, appointees described a sometimes confusing relationship between custody and program functions. How do the divisions under your supervision relate to the program and administrative divisions headed by the two other CDCR undersecretaries? Please provide an example of an educational***

***program and a self-help program, explaining which division is responsible for creation, hiring and firing personnel, quality control, and assessment.***

In any large organization, the need for collaboration among various disciplines is essential. In a correctional environment, however, collaboration efforts are sometimes hindered or complicated by the fact that all disciplines must stay keenly focused on safe and secure operations. To do otherwise will jeopardize the lives of our staff and inmates and will seriously jeopardize public safety.

I believe the divisions under my supervision relate very well to both the program and administrative support divisions headed by the other two undersecretaries. The prisons and parole division are especially eager of the promise to receive new evidence-based programs, and all areas are extremely appreciative of the caliber of executive staff recently recruited to assist with research, budgets, contracts, and human resources. Additionally, in that the reorganization established one Chief Deputy Secretary for Juvenile Justice with responsibility for both custody and program functions for the DJJ, juvenile justice has not been the subject of any program confusion.

The message from the Secretary is clear that Wardens are responsible for ensuring the day-to-day operation of all programs, and that Wardens are responsible for making sure there are self-help, leisure time, and activity group programs for their inmate population. Although Adult Programs is assisting in the creation and hiring of program staff (i.e., the new Community Partnership Managers, previously known as Community Resource Managers), and is responsible for developing program policy and quality control measures, all staff in the institutions report to the Wardens, and Wardens must approve all self-help and leisure-time activities to ensure safe operations.

This area seems to require continuous collaboration because of the distinction between "evidence-based" programs, (vocational education, academic programs, substance abuse treatment), and self-help and inmate leisure time activity groups (narcotics anonymous, alcoholics anonymous, veterans groups, victim offender reconciliation groups, etc.). Evidence-based programs have a proven positive impact on recidivism reduction and are funded or staffed by the Department. Self-help programs are generally staffed by volunteers, unfunded or locally resourced, and have not been formally evaluated. However, the value of self-help programs and leisure time activity to maintaining the safe operation of prisons cannot be overstated.

It is critical Wardens and staff continue to occupy the minds and leisure time of inmates. Without structured leisure-time activities, inmates have too much idle time, and left to their own devices will create their own form of "dangerous" entertainment. It is also an operational reality that evidence-based programming primarily occurs during normal business hours, and that our current overcrowded conditions do not allow for full inmate participation. As such, Wardens must continue to incorporate and be responsible for



the operational oversight of self-help programs such as alcoholics anonymous and leisure-time activities such as basketball.

It is also critical the Department focus on and incorporate evidence-based programming as a means to reduce recidivism and control population growth. Adult Programs, has the full responsibility for this charge, and my counterpart, the Undersecretary of Programs, has responsibility for the Department's existing evidence-based programs, such as vocational education, academic programs, and substance abuse treatment, as well as the responsibility for creating new evidence-based programs, hiring and firing program personnel, ensuring quality control measures are met, and conducting assessments.

Although I believe the confusion of the roles between custody and program functions has diminished, I will continue to work with my counterpart to ensure transitions occur seamlessly, and that I provide clear and concise direction to the field.

**5. *One of the earliest concerns of the Legislature about the reorganization was that juvenile justice issues would be lost among adult operational issues. How do you ensure that juvenile issues receive appropriate attention with so many more adults in custody and on parole?***

There is no longer any need to be concerned that juvenile justice issues will be lost among adult operations. To the contrary, since my return, not only have juvenile justice issues taken center stage, they are of paramount concern in my daily operational oversight. For the past six months, juvenile justice issues, including population reduction efforts, facility closures, layoffs, and *Farrell* plan implementations have continued to be at the forefront of my operational focus and Departmental concern.

On a weekly basis, I conduct several meetings focusing solely on the resolution of juvenile justice issues. I require all Departmental cabinet level directors and Chief Deputy Secretaries, including representatives from facilities management, labor, legal, communications, legislation, budgets, contracts, human resources, training, adult operations, and juvenile justice to be present. The purpose of these meetings is to set tone that we are one Department and to bring all necessary Departmental support and focus to DJJ during this tumultuous time. The primary focus of these meetings surround the closure and repurposing options for both DeWitt Nelson and Paso de Robles, the resulting layoffs, and options for taking care of our Departmental staff. Whether it be finding staff jobs within Adult Operations or elsewhere in the Department, ensuring accurate communication is made to the field, or ensuring staff are following proper policy directives.

Additionally, I conduct smaller weekly meetings with the Department of Personnel Administration to make sure the approval of layoff plans and policy decisions are

consistent with contract mandates. I am also working closely with the Office of the Receiver in this endeavor to request medical staff placements be considered.

Another top juvenile justice priority for the Department is the implementation of the *Farrell* Remedial Plans. Again, this endeavor requires regular meetings at the highest levels, and coordinated efforts with the Office of the Attorney General and our legal division.

I ensure juvenile justice issues receive appropriate attention not only because of my management style, providing equal access, support, and direction for all of my operational areas, regardless of operational scope, but also because of my current executive team. I am fortunate to have both my Chief Deputy Secretary of Juvenile Justice, Bernard Warner, and my Chief Deputy Secretary of Adult Operations, Scott Kernan, as members and direct reports to our executive leadership team. Their managerial expertise allows me to focus on mission critical issues for the Department as they arise.

### **Operational Issues**

*In June 2007 Kingston Prunty, then undersecretary, said at his confirmation hearing that the Department would soon re-implement regularly scheduled audits to help determine how well institutions are complying with policy.*

- 6. What benchmarks do you review on a regular basis to determine whether individual adult and juvenile facilities and parole offices are operating safely and promoting the Department's mission? What red flags do you look for on a regular basis? What is the status of the audits Mr. Prunty cited?**

Ongoing operational issues are formally monitored through the Department's quarterly COMPSTAT process. This process allows the executive team to review adult, juvenile, and parole operations to identify systemic issues that need to be addressed. Current performance is compared to past performance, and then to performance among like operational areas. Although the quarterly information is still being collected and reviewed, formal COMPSTAT reviews have ceased pending a COMPSTAT upgrade and relocation process.

In the first quarter of this year, the Department transferred the responsibility of the COMPSTAT unit into the Department's Office of Audits and Compliance (OAC). This move is extremely advantageous to the Department for several reasons. The move provides continuity to the Department's increased focus on internal oversight. It connects the various audit/review functions with the COMPSTAT accountability functions and establishes additional internal controls as the data reported through COMPSTAT can be examined firsthand through peer reviews and compliance audits.



In March 2008 COMPSTAT upgrades to improve data accuracy, reduce the time it took field staff to collect the information and allow the data to be shared on our Department's intranet were commenced. Executive staff will review their COMPSTAT data in its "new version" next month, with the formal quarterly COMPSTAT review process scheduled to resume in June 2008.

All audit processes discussed by Mr. Prunty are in place and operational. In August 2007, the Department restructured OAC to allow audit teams to conduct comprehensive peer reviews in both adult and juvenile facilities. The adult institution peer reviews started in September 2007 and the juvenile facility reviews started in April 2008. The OAC conducts one adult peer review each month, focusing on security operations, administrative segregation, case records, inmate education programs, information security, lethal electrified fences, radio communications, business services, inmate appeals, armory operations, and more. Juvenile facility reviews include use of force, business services, information security, access to medical care, and more. Corrective action plans are required, and six-month follow-ups are conducted by OAC. The OAC also began conducting program compliance audits, and conducts special internal control audits on a regular basis, often at the request of the Undersecretary, Operations.

The red flags I look for on a regular basis surround safety and security issues at the prisons, juvenile facilities, and in parole units. The COMPSTAT process establishes red flags by default, with an automatic comparative analysis of indicators showing an increase or decrease in the operational area captured. For instance, data showing an increase in use of force and incidents are indicator of institutional unrest. Data showing a decrease in program participation may also be an indicator of institutional unrest resulting in modified program or lockdown of a particular facility. The COMPSTAT process allows for open discussion between the executive team to address issues and provide assistance from all Departmental areas to remedy the issue in an expeditious manner.

In addition to COMPSTAT, on a monthly basis I receive Executive Summary Reports (ESR) for focus operational areas. The ESR process is an even higher-level of refinement in selected operational areas. This month's ESR reporting requirements include focused attention on *Farrell*, Lifer Hearings, and Jessica's Law. The ESR is a dashboard measure, with red flags identified and highlighted. Each Undersecretary has select areas of ESR for their respective areas of control. Additionally, the Secretary conducts quarterly ESR meetings to monitor those areas with the highest focus for the Department. Area Directors, Chief Deputy Secretaries and Undersecretaries are present for quarterly ESR meetings.

**7. Overtime costs dropped 24 percent in general population level III/IV institutions in the fourth quarter of 2007. Yet overtime continues to be costly, running \$43 million for all officers and sergeants last November, according to the Sacramento Bee. Is that figure accurate? What are your current overtime costs and why? What is the biggest driver of overtime and what are you doing to try to control these costs?**

The extraordinary use of overtime is a serious concern for our Department. Actual overtime expenditures to this point in 2007-08 range from \$38.3 million to \$45.7 million per month. Since my appointment to Undersecretary, Operations, there have been three notable drivers contributing to the large amounts of overtime: (1) medical guarding and transportation overtime costs, (2) sick leave usage, and (3) peace officer vacancies.

One of the biggest drivers of our current custody overtime costs pertains to medical guarding and transportation, driven by the implementation of medical reforms. After recently completing fiscal reviews, the Division of Adult Institutions, Program Support Unit, is examining assignment schedules and coding errors identified through the review process. The Program Support Unit and the Office of Fiscal Services will work to institute a system-wide process for correcting records to ensure accurate reporting. As the Receiver's Office and the Department establish and fill positions for medical guarding and transportation, the necessary controls will be in place to reduce the Department's overtime usage for these activities. To ensure this operational function transitions seamlessly and expeditiously, I meet regularly with the Receiver's Office, and I have set expectations for my staff to assist the Receiver's staff in resource coordination efforts to achieve this mutually beneficial objective.

The second driver of overtime continues to be sick leave. Although the Department is addressing minor coding errors related to sick leave usage to ensure more accurate accounting, more importantly, the Department has moved forward to effectuate the implemented terms and conditions of sick leave usage as set forth in the last, best, and final offer. The State's Last, Best and Final Offer incorporates new requirements for the use of sick leave. To ensure this operational function transitions seamlessly, I meet weekly with the Department of Personnel Administration, this topic is included in my regular policy discussions with Wardens and executive staff, and our Office of Labor Relations is a regular presenter at all Warden and staff meetings.

The third driver of overtime costs is vacancies in our entry-level peace officer classifications. While vacancies continue to be a direct contributor to overtime usage, over the past year, focused efforts directed at recruiting, training, and hiring new correctional officers to alleviate overtime have been undertaken. These efforts have been extremely successful, with the Department on schedule to fill all entry-level peace



officer positions by January 2009. This achievement is impressive given that the Department had almost 4,000 vacant officer positions (including positions identified as unbudgeted) in the 2006-07 fiscal year. While inmate population reductions have contributed somewhat to a reduced need for entry-level peace officers, in order for the Department to control its operating overtime costs relative to vacancies, it is imperative that we eliminate vacant positions statewide and eliminate the need to use overtime staffing to conduct day-to-day operations.

**8. *Given the many challenges you face daily, how do you keep yourself abreast of the relevant issues in each area? How often are you able to visit adult and juvenile facilities or parole offices? Do you meet regularly with Wardens, superintendents, and parole administrators? Do you meet regularly with the statewide family council or other advisory groups? Do you meet with the elected mens' or womens' advisory councils at any of the state prison? What is the optimal meeting interval for each?***

Communication is the single most important method for staying abreast of relevant issues in each area. In addition to weekly Cabinet and Chief Deputy Secretary Meetings, I have individual meetings with all my direct reports on a weekly or bi-weekly basis. I receive serious incident reports and red flag reports via email daily and each of my direct reports can reach me by telephone day or night.

On average, over the past six months, I have made at least two site visits a month. I have visited both adult and juvenile facilities. I have met with Wardens as a group on three occasions, and I have met all of the juvenile facility Superintendents via their monthly Superintendent's meetings twice. I have met with each Commissioner of the Board of Parole Hearings, and I was able to attend two of the Commissioner meetings. I also meet with Wardens, Superintendents and Parole Administrators regularly at the COMPSTAT meetings.

Meetings with the Departmental Inmate Family Council (IFC) are scheduled at regular intervals, and are attended by my directorate staff. I am briefed regularly on IFC issues, and make positive policy decisions that rise to the level of Undersecretary to advance family reunification efforts throughout our prisons. Current relations with the IFC are very positive, and I believe this to be a direct result of the dedicated Departmental staff we have focused on this partnership endeavor. In previous assignments, I met regularly with the IFC and found all meetings to be mutually beneficial.

I do not meet with the men's or women's advisory council at the prisons as this is an assignment delegated to the Wardens, in that they are in the best position to resolve issues that arise. However, I am not opposed to such meeting if requested.

### **Assembly Bill 900**

*On April 26, 2007, the Legislature approved AB 900 (Solorio and Aghazarian), Chapter 7, Statutes of 2007, the Public Safety and Offender Rehabilitation Services Act of 2007. This act is intended to finance construction of space for 40,000 state inmates and create a broad range of performance measures that the Department must meet. It is also supposed to expand a number of existing programs under our jurisdiction.*

**9. Are you responsible for implementation of AB 900? If so, which portions are under your supervision? Which are under the supervision of the other undersecretaries? What role will you play in monitoring implementation?**

Although the Secretary is ultimately responsible for the successful implementation of Assembly Bill (AB) 900, each of the three undersecretaries has portions of the bill that fall directly under their respective areas of supervision.

As Undersecretary, Operations, I am responsible to ensure the implementation of the following specific areas set out in AB 900:

- Interstate corrections compact.
- Review existing parole procedures.
- Establish day treatment or crisis care services for parolees.

The implementation of the Interstate Corrections Compact, referred to as our California Out-of-State Facilities (COCF), is complete and the program is operational. The Department has successfully designed, developed, and resourced the COCF program, negotiated contracts for 8132 beds in six out-of-state locations, and as of May 1, 2008, medically cleared and transported 3765 California inmates to those locations. I cannot overstate the dedication and perseverance demonstrated by the COCF team to meet the Department's objectives or the impact the COCF provision of AB 900 has had on relieving the Department's overcrowding crisis.

The Review of Existing Parole Procedures is also complete. The Division of Adult Parole Operations (DAPO) reviewed and evaluated its operational policies and procedures to ensure they were supportive of the overall reform objectives of AB 900. Through this process, the Department identified two primary parole-related focus projects that, when implemented, will advance the reform objectives set out in AB 900. The two parole focus projects include developing a decision-making matrix instrument to improve consistent decision making in the field, and developing an incentive-based earned discharge program designed to reward parolees for violation-free positive



behavior while on parole. Both of these projects are in the field-testing and training phases of implementation. Although I have assigned primary program responsibilities for the decision making and earned discharge projects to my Chief Deputy Secretary, Adult Operations, I monitor implementation status on a regular basis.

The DAPO has established day-treatment and crisis care services for parolees. It is anticipated at least 300 parolees will be receiving these services by June 30, 2008. To date, there are approximately 200 parolees receiving services. DAPO continues to work to execute public entity contracts with counties willing to participate in this partnership endeavor. I continue to monitor this process monthly through receipt of updated action plans for this project.

As Undersecretary of Programs, Kathy Jett, is responsible to ensure the implementation of the following areas set out in AB 900:

- Determine a system of academic and vocational education incentives.
- Expand substance abuse treatment services in prison and on parole.
- Conduct inmate assessments.
- Develop an inmate treatment and prison-to-employment plan.
- Increase full-time participation in academic and vocational programs.
- Establish secure reentry facilities for up to 6,000 inmates.

The Undersecretary of Administration is responsible to ensure the implementation of the following areas set out in AB 900:

- Develop and implement management deficiencies plan.
- Construction projects (reentry facilities, infill beds and dental/mental health).
- Southern academy and master plan.

The executive leadership team has Prison Reform and Rehabilitation (PRR) meetings twice weekly to monitor the progress of AB 900 implementation. Initially, the PRR meetings occurred daily for up to two-hours in afternoon. Although now the meetings occur less frequently, in that AB 900 implementation processes are underway, should an urgent issue arise, the team will scheduled a PRR meeting immediately.

**10. Under AB 900, the Department is required to assess inmate needs for education, mental health, and substance abuse treatment services and to expand the availability of these services. Please describe your role in developing this plan and monitoring its implementation. Please identify key milestones and expected timeframes.**

As set forth above, both inmate assessments and increasing programs are the primary responsibility of the Undersecretary of Programs. Currently, the Chief Deputy Secretary of Adult Programs is responsible for the development of the comprehensive program

work plan, including key milestones and expected timeframes. It is my understanding the Adult Programs division, working with a renowned project management firm, has nearly completed the comprehensive work plan. My role in the development stages of the work plan has been supportive and informational at junctures where the plan intersects with ensuring that safe custody practices are followed in implementation strategies.

### **Juvenile Justice Reform**

*In 2004 the administration reached a landmark settlement in the Farrell lawsuit on the conditions of confinement in juvenile facilities. The Division of Juvenile Justice is supposed to implement a broad array of reforms, including creating smaller living units, improving education and mental health services, and bolstering safety.*

*In February 2008, however, lawyers representing juveniles urged a judge to name a receiver to run the system they say remains broken. They contend that DJJ has missed dozens of court-ordered deadlines for change dating back to 2005, making "a mockery of compliance" in six areas: education, safety, medical care, mental health, disabilities, and sex-offender treatment.*

**11. What is the status of that lawsuit? What is your role in monitoring the implementation of the juvenile justice reform efforts required by the court in the Farrell lawsuit? Specifically, how do you track progress?**

The *Farrell* lawsuit is ongoing. During the week of April 21, 2008, Alameda County Superior Court Judge Jon Tiger held an Order to Show Cause Hearing. Witnesses from both parties testified during the hearing. It is the State's position the Court lacks the legal authority to appoint a receiver, that Plaintiffs are in agreement that the State shall be evaluated on the standards and criteria for each remedial plan, and that appointing a receiver is not necessary as the State has made substantial progress in its implementation of the six *Farrell* remedial plans. The Court has yet to hear all of the testimony and a resolution may not be reached until late May, at the earliest.

As Undersecretary, Operations, I am ultimately responsible for the successful implementation of the *Farrell* remedial plans. My role is to provide leadership, direction and support to the Chief Deputy Secretary, DJJ, as we move forward to implement the reforms required in the *Farrell* remedial plans. As such, over the past six months, during my oversight of the implementation process, I have met with project implementation staff, and at various stages in the litigation process, have met with the Deputy Attorney General assigned to this case.

During initial briefings, it was evident that in order to comply with the six remedial plans and their extensive implementation strategies, unforeseen internal adjustments were required. To date, the Department has made those internal adjustments.



The Department has redirected resources, expedited the burdensome processes in contracting, budgeting, and hiring of personnel, and incorporated a focused project management component to coordinate the efforts required of all six plans and their critical interdependencies. With dedicated resources, executed contracts, and executive hiring complete, we are on track to implement all of the remedial plans successfully. I would be remiss to say we do not have ongoing and unforeseen barriers to overcome. However, with the team assembled and the continued effective communication with counsel, all remedial plan barriers will be expeditiously resolved.

Remedial plan audit status:

- Education Remedial Plan, the first filed with the Court, indicates 67 percent substantial compliance as of March 2008.
- Wards with Disabilities Remedial Plan, indicates 62 percent substantial compliance as of April 2007.
- Health Care Remedial Plan indicates 70 percent substantial compliance in the first audit, November 2007.
- Safety and Welfare Remedial Plan indicates 22 percent substantial compliance in the first audit, November 2007.
- Sexual Behavior Treatment Remedial Plan indicates 7 percent substantial compliance as of July 2007.
- Mental Health Remedial Plan has its first audit scheduled May 9, 2008.

In that all audit tools have been developed and approved by the court, consistent quarterly court monitoring audits will begin during the third quarter of 2008.

Intensified improvement efforts are underway for all six remedial plans, with focused efforts on both the Safety and Welfare Remedial Plan and the Sexual Behavior Treatment Remedial Plan. Timelines associated with the Safety and Welfare Remedial Plan, filed with the court October 2006 were overly ambitious and did not take into account State processes to develop or secure resources, (i.e. information technology development and contracts). The Department has identified new, more realistic deadlines, for 22 of the most important items from the six Farrell Remedial Plans, and has hired a project management consultant to develop a more complete project plan to ensure critical dependencies are met. Additionally, a contract is now in place for the expert resources required to develop the sexual behavior treatment curriculum, with the curriculum projected to be complete by May 2008. Thereafter, I have directed that policies be expedited, and progress in this plan be advanced.

Overall, remedial plan results do show significant improvements in the areas of hiring and training of new staff, development of a new risk/needs instrument and the implementation of an integrated behavior treatment model. As of April 29, 2008, DJJ has 61 living units open and 42 units (69 percent) are compliant with *Farrell* population caps. Simultaneously, DJJ is repurposing facility living units in accordance with *Farrell*



mandates, closing two facilities and redistributing its youth population. Most significantly, there has been a 47 percent decline in youth on youth violence incidents over the past year when adjusted for population decline.

As Undersecretary, Operations, I track the progress of *Farrell* on a weekly basis. The DJJ, Chief Deputy Secretary, Bernard Warner, is my direct report. I meet weekly with Mr. Warner to discuss all DJJ operational issues and *Farrell* progress. Additionally, I receive quarterly Executive Summary Reports specific to *Farrell*, outlining, at an executive level, the progress and barriers for detailed remedial plan items.

***12. The position of division chief of programs was just filled a few months ago for the first time since the July 2005 re-org. The position of division chief for juvenile parole has never been filled since the 2005 re-org. How do you meet settlement mandates and achieve program improvements without permanent staff in these key positions?***

Effective management in all operational leadership positions is critical to the success of all operational areas in the Department. As such immediately upon my return, I have made concentrated efforts with my executive team to fill all operational management vacancies. Upon my arrival, the chief positions for both the programs division and juvenile parole division had employees acting in those capacities. After learning that since the reorganization in 2005 there have been four acting directors fulfilling the role of leading the Parole Division, an aggressive recruitment process was undertaken, with the Department making a permanent appointment in the very near future.

It is critical to fill key leadership positions in order to meet settlement mandates and achieve program improvements. However, filling the chief positions on a permanent basis met unforeseen challenges. DJJ experienced extensive reductions in the ward population as a result of Senate Bill 81, forcing permanent budgetary concerns resulting in the closure of the Dewitt Nelson Youth Correctional Facility and the El Paso de Robles Youth Correctional Facility, by July 31, 2008. Although challenging, we have managed to fill all but one key vacant director position, which is currently pending appointment approval.

**Gang and Violence**

*Racial segregation has been used in California prisons as a way to separate prison gangs and reduce violence. But in 2005 the U.S. Supreme Court ruled that the state could segregate prisoners by race only in rare instances. In the wake of the decision, the state announced a legal settlement phasing out segregating inmates along racial lines.*

**13. *What progress have you made toward implementing the settlement and what is your timetable? Has it required changes in your prison gang strategy or other custody practices?***

In response to the U.S. Supreme Court decision in *Garrison S. Johnson v. State of California*, and the 2004 settlement agreement terms, the Department has completed the planning and development stages of its Integrated Housing Program (IHP), resulting in the adoption of a three-phased implementation strategy for the integrated housing assignments of California inmates.

Progress to date includes the completion of all planning and development activities, the project team's site visit to the Texas Department of Corrections (TDOC), where integrated housing was implemented successfully, and the development of policies, procedures, lesson plans, an inmate video, bilingual handout, and statewide staff training.

Additional progress includes the near completion of Phase I. Phase I focuses on the information technology component of the project and establishing the required housing eligibility and inmate coding, whereby employees interview and code inmates, using one of five different codes and entering the information into the Department's Distributed Data Processing System. The Department released Phase I to reception centers in November 2006 and to General Population institutions in February 2007. It is anticipated that Phase I will be fully operational by July 2008 with all current inmates in receipt of an integrated housing code, and with all new arrivals on track to be interviewed and receive an integrated housing code.

Phase II, designated as the integration phase, is on schedule for implementation beginning in July 2008. During Phase II, inmates at Mule Creek State Prison and Sierra Conservation Center will receive assigned cells based on their established integrated housing codes. Phase II will provide real data on the number of inmates who refuse to cooperate, those who are subjected to the disciplinary process, and those who receive disciplinary related sanctions.

Phase III is designated as a continuation of the integration phase and will be scheduled after July 2009. Based on the lessons learned from the TDOC, implementation of Phase III may take several years. During Phase III, the Department will move the IHP to institutions with higher security levels. Prior to Phase III activation, the Department will analyze data from its two Phase II prisons and lessons learned from the Phase II implementation. A full understanding of the operational impacts of Phase III's statewide deployment will require critical review of project implementation options. Although the Department is on schedule for complying with the terms of the settlement agreement, with full-implementation of the IHP projected over the next two-years, only after careful review of all potential safety and security concerns and contingencies will the Department move forward with Phase III.



The Department recognizes the potential for increased violence during the initial implementation of the IHP. Appropriate disciplinary processes are incorporated in the policies and procedures for the IHP, and statewide staff training on the new process has occurred. Moreover, the Department has incorporated the lessons learned from the TDOC IHP model to assist with the California model. At this stage of implementation, the IHP has not affected the Department's current gang management policies.

**14. *You've been with CDCR since 1982. As you look back on those years, what lessons have you learned to help you create the most effective gang strategy? Do you have the tools you need to diminish the influence of gangs?***

As I look back, there are two lessons that will help me create an effective gang strategy for the Department:

1. The influences of violent gangs in our prison system cannot be overstated.
2. We must incorporate back-to-basics correctional principals and practices in the operation of our prisons, juvenile justice facilities, and parole units statewide.

Estimates indicate that 70 percent of the violence in prison is gang related. Last year alone there were 277 riots, 1,702 staff assaults, 14 murders, and 352 lockdowns attributed to gangs. Just recently, two southern Hispanic inmates associated with the Mexican Mafia and southern California street gangs brutally assaulted three staff at the California Correctional Institution in Tehachapi.

Prison managers are no different from police chiefs and sheriffs in that I doubt anyone in law enforcement would say they have sufficient resources to combat gangs. They are a plague in our communities just as they are in our prisons. Our gang investigators are outnumbered 1,000 to one. I believe the Governor's California Gang Reduction, Intervention and Prevention (CalGRIP) Program, introduced last year, modeling a balance in suppression efforts with intervention and prevention programs, is the right tactical approach for California and for California's correctional system. It is widely accepted that we cannot arrest our way out of the current gang crisis; however, by the time the Department receives these inmates they are wholly entrenched in a gang lifestyle, and while we afford them an opportunity to disassociate from the gangs, we are well past the preventative stage. We need to focus prevention efforts on our youth, and the younger the better.

To manage our gang populations effectively, the Department needs to neutralize their leadership as we have to a certain degree in our security housing units and the Short Corridor Program at Pelican Bay State Prison. We need to use our administrative regulations as well as the courts to address the underlying criminal enterprise that fuels gang activity both in prison and in the community. As the Department makes gang



participation less desirable, we need to continue to provide a safe means to disassociate from the gangs; and, perhaps most importantly, we need to increase our capabilities to monitor, analyze and interdict gang activity in collaboration with local, State and federal law enforcement agencies.

As Undersecretary, Operations, one of my primary objectives has been to implement our back-to-basics operations plan. Earlier this year we began *Operation Changing Tides*, as an initiative intended to stabilize our prisons so that we can introduce programming back into our system. *Changing Tides* starts with a team of specially trained investigators charged with identifying and removing aggressive gang leadership and their soldiers from the general population. Prison personnel and management are tasked with sustaining operations, rebuilding behavioral incentives and disincentives, and proactively policing the inmate population. Programming begins to provide our inmates with productive alternatives to the gangs and a path to rehabilitation. It is my intent that we move from prison-to-prison until we have wrested control from the gangs and restored the integrity of prison operations.

The Department recently completed a gang management review by a group of national gang experts that I believe will be useful in making strategic fundamental changes to our gang management policies and practices. However, without the dedication of personnel and intelligence resources required to manage our gang population and a centralized information management system, the Department will not have the tools needed to diminish the influence of gangs within our prison system.

**15. *The Department has developed behavior management units to provide unruly inmates with incentives for improved behavior. Please discuss what evidence you have gathered from these programs, and how the results have informed prison programs and decision-making.***

Management of disruptive inmates continues to be one of the most significant issues impacting the Department and our ability to implement effective recidivism reduction strategies. After identifying a need to take immediate and appropriate corrective action to manage the population of inmates involved in disruptive behavior, violence, and continued noncompliance with CDCR rules and regulations, in November 2005 the Department developed and piloted the use of Behavior Management Units (BMU).

The BMU program utilizes a four-step disciplinary process to change inmate behavior. The BMU program incorporates evidence-based curriculum, including anger management, "A Framework for Breaking Barriers," Alcoholics Anonymous, and Narcotics Anonymous. The program is an alternate general population program intended to modify recalcitrant inmate behaviors through education, strict controls on property and privileges, and appropriate disciplinary action. Within the institutions, the BMU program helps inmates develop basic, cognitive coping mechanisms and life skills that assist them to function more appropriately in the prison environment. The BMU

program allows us to remove a disruptive element from the general population, thus allowing the remaining inmate population to program with reduced violence and disruption to programs. The BMU program offers often-violent inmates with self-improvement programs that will help with the transition process back to the mainstream prison population, and ultimately, the community.

The Department currently has six BMU programs located at High Desert State Prison (HDSP), Calipatria State Prison, California Correctional Institution, Pelican Bay State Prison, Substance Abuse Treatment Facility and State Prison at Corcoran, and Salinas Valley State Prison. Although the pilot program expired in November 2007, the Department continues to operate the BMU programs and is in the process of adopting emergency regulatory language.

Although designated as an alternative to general population housing, staff challenges exist with the daily operational requirements of the BMU. For instance, BMU inmates are segregated from the mainline population requiring a higher degree of controlled movement when released for out-of-cell time, library, education, classification committee, medical appointments and feeding. Officers working in the BMU are required to complete and monitor BMU activities, along with the usual duties of a correctional officer assigned in a housing unit, including responding to yard incidents, medication release, cell searches and other routine duties. As this pilot program developed, it became apparent the mandated daily requirements of operating a BMU would require additional correctional officer posts. The Department continues to move forward with additional resource requests for this purpose.

As the official pilot institution, the Adult Research Branch of the Office of Research evaluated HDSP's BMU program. The final evaluation report is schedule for release in July 2008.

Preliminary descriptive information of inmates placed in the BMU pilot program at HDSP:

- There were 164 inmates placed in the BMU program at HDSP during the period of November 21, 2005 and July 31, 2007.
- The average age of inmates placed in the program was 33 years old.
- The inmate ages ranged from 19 to 71 years old.
- The majority of inmates, 73.8 percent had a classification score equivalent to that of a Level IV, 22.6 percent were Level III, 3 percent were Level II, and .6 percent were Level I.

The preliminary evidence indicates that for the 76 inmates placed in and completing the BMU program, the Rules Violation Report (RVR) rate was significantly lower, approximately 27 percent, during the six-month period after program completion when



compared to the six-month period before entering the program, with inmates completing the BMU program having almost six-times fewer RVR's after program completion.

A second analysis indicates that there were more overall RVR's at HDSP during the 12 months before the BMU was implemented (1,875) than after it was implemented (1,661). This represents a difference of 214 fewer RVR's, or a decrease of 12.9 percent, during the 12-month comparison.

Additional feedback from institutions currently operating BMU's indicates that the BMU program is effective in managing the population of inmates who are deemed program failures and who are disruptive to the operation of the institution.

Based on the preliminary results and positive feedback, the Department has made the decision to continue to use the BMU program within the institutions. It is my belief that this program effectively reduces violence, contributes to the safe and secure operation of our institutions, and expansion to the additional eight institutions identified in the Department's implementation plan should occur.

### **Contraband in Prisons**

*The Rules Committee heard testimony last year of 600 cell phones found at CSP Solano alone. Drugs, cigarettes and other contraband continue to find their way into prisons.*

**16. How are you addressing the problem of inmate and ward access to contraband, including cell phones and illegal substances? How widespread is the problem, and are additional strategies being considered to minimize access?**

Any form of contraband introduced into the secure perimeter of a prison or juvenile facility is of great concern to the Department, and is a serious threat to safe and secure operations. Some forms of contraband, such as illegal substances or tobacco, are used illicitly by the inmate population or are used as a form of illegal "bartering" between inmates/wards. Other forms of contraband, such as dangerous weapons, can be used to injure our staff. With the influx of modern communication devices, such as cellular telephones into the prison system, the opportunity for inmates/wards to create disruptions threatens not only our prison operations, but the public at large. These devices are used to coordinate communication with individuals outside of the prison and to coordinate inmate communication from prison to prison. The devices can be used to plan escapes or to promote organized criminal enterprise (gang) activity, disrupting institutional operations, and posing serious threats to public safety.

Contraband in our prisons is a daily and continual problem. While the Department continues to use several effective approaches to combat illegal substances and



weapons from entering our institutions, modern cellular telephone technology is presenting serious challenges. Investigations combined with random drug testing of inmates, the use of drug sniffing dogs, camera surveillance of visiting rooms, monitoring of inmate telephone calls, use of hand-held metal detectors to scan prison yards for weapons, the use of x-ray equipment for mail and packages, and training of staff to better identify methods used to smuggle contraband into institutions is effective. However, over the past two years, correctional entities nationwide have seen an enormous rise in the number of cellular telephones introduced into the prison systems. The CDCR has seen an increase from 261 cellular telephones discovered in 2006, to 992 cellular telephones discovered in 2007. The primary method of introduction into our prisons includes visitors, volunteers or contractors, and Departmental staff. Because of the ongoing and serious threat cellular telephone contraband presents in our daily operations, the Department has taken additional steps to thwart its introduction into our prison system.

Most recently, in December 2007, in response to the increasing threat of unauthorized communication devices, such as cellular telephones being introduced into the institutions, the Department established a Warden's Advisory Group (WAG). The WAG was tasked with providing recommendations on how to stop the introduction of cellular telephones into the prisons. The WAG developed a three-pronged strategy aimed at curtailing unauthorized communication devices, focusing on entrance security, technology for detection of communication devices, and legislation.

- The WAG determined that entrance security and the delineation of cellular telephone devices as illegal contraband on prison grounds must be standardized at all prison and juvenile justice facilities. The following steps are recommended for improvement:
  - The Department will standardize and ensure the posting of warning and disclaimer signs at all secure area entrances, clearly defining the policy and ramifications of introducing unauthorized communication devices within the prison to all staff, volunteers, contract employees, and visitors.
  - The Department will develop and implement accountability procedures for wireless communication device at all institutions for state-issued or authorized communication devices entering or leaving the secure perimeter.
  - The Department will standardize procedures for personal property allowed within the secure perimeter and standardize search requirements.
- The WAG also considered purchasing and installing additional metal detectors, as well as conveyor-style x-ray machines for all secure perimeter ingress and egress points. Factors considered when determining the feasibility of this

measure included the cost for the equipment, the additional personnel necessary to operate and monitor all check-points, and the logistical operational concerns created where staff are required to be "on post" at a specific time for institutional security coverage.

- The WAG also considered the purchasing of detection technology for communication devices. The Department has analyzed equipment used in other correctional settings, and has field-tested equipment related to this strategy. Specifically, last year, the Department conducted a 60-day test of a cellular telephone detection system at California State Prison, Sacramento. The test results determined that implementation statewide would be cost-prohibitive and provide only marginal benefits to the Department. Additionally, this type of detection technology is in its infancy stages, with current technology requiring the installation of hard wiring sensors throughout an institution at a cost of in excess of \$2 million for each institution. Further, it is likely that hard-wired systems could soon become, if they are already not considered to be, antiquated in this advancing technological field. Finally, preliminary results indicated poor performance. While the system was able to detect the presence of a cellular telephone, it was not able to identify the exact location of the cellular telephone, making it difficult, if not impossible, to pinpoint where staff should search to locate the device.
- The most important strategy, moving forward with legislation to make cellular telephone possession a crime, was undertaken earlier this year. The Department, with the assistance of Senator Alex Padilla, introduced SB 1730, which would have made it a felony for anyone to willingly and knowingly introduce an authorized communication device into the secure perimeter of an institution. This measure is extremely important to the three-pronged strategy because the Department has uncovered many people, including Departmental staff, who have attempted to smuggle these devices into the prison system. Because it is currently not a crime to do so, the most significant penalty available to the Department is termination of employment. For many occupations, especially in the service arena (cooks, janitors, clerical workers, etc.), the loss of employment is not a great disincentive compared to the price paid for the cellular devices by inmates, since reemployment is readily available in the private sector. During the committee process, the criminal penalty was removed from the bill and the bill, in its current form, mandates the use of metal detectors for staff who work within institutions. While the Department does believe that the use of metal detectors could be part of an overall strategy, again, this alone will be ineffective to thwart cellular telephones from coming into the institutions. The Department has also been made aware that materials of modern cellular telephones may pass through metal detectors undetected, thus making this an ineffective solution to this dangerous public safety concern.



To protect the public and maintain secure prisons, it is imperative that criminal penalties be enacted to the knowing and willing introduction of unauthorized communication devices into California's prison system. For this reason, the Department will continue to pursue its options for criminalizing this activity.

### **Visiting**

*Many institutions have little or no space to process visitors who, in some cases, stand outside without shelter from sun or rain for several hours, waiting to visit inmates. Visits are terminated by staff when small visiting areas become too crowded. Some institutions allow appointments to minimize wait times, but others do not.*

**17. Who do you hold responsible for informing you of problems with visiting at both adult and juvenile facilities? Are improvements for processing visitors and visiting areas being contemplated as part of recidivism reduction or AB 900 efforts? Is someone responsible for monitoring visiting practices for consistency among prisons? Who tracks visitor processing times and the number of terminated visits?**

The Chief Deputy Secretary of Adult Operations and the Chief Deputy Secretary of Juvenile Justice are responsible for advising me of serious problems related to visiting within their respective areas. Additionally, visiting is one of the many critical areas that the Office of the Ombudsman monitors with extensive contact with inmates and their families. All three departmental Chiefs are my direct reports. Visiting is also one of the many elements tracked through our departmental COMPSTAT review process.

While overcrowding has presented its challenges relative to providing sufficient visiting time to inmates and their families, I believe the CDCR has made significant improvements over the past few years in reducing the impact and increasing inmate family relations, sometimes under the most difficult situations. Major successes include:

- Adding a third day visiting component to 20 prisons, successfully reducing terminated visits by 66 percent between July 2006 and January 2008.
- Building a "child space" visiting facility to facilitate mediated family visits at the California Institution for Women (CIW).
- Implementing a bus service to assist families with transportation to the female facilities.
- Hiring licensed clinical social workers at 22 prisons to assist with and support family reunification and visiting issues.
- Construction of a new processing center for visiting at CIW, with a projected project completion date of July 2008.



While Assembly Bill 900 did not include funding for visitor processing areas, the Department has taken into consideration the importance of ensuring that adequate visiting space is included in the design for the Infill Bed Plan and the secured reentry facilities. In addition, recently the Department's attempts to construct a new visitor-processing center at Correctional Training Facility were unsuccessful because of the enormous State budget deficit and the Department's priorities to improve and maintain structurally sound living environments.

The monitoring of visiting practices remains the responsibility of the individual Wardens. However, oversight of statewide visiting programs, policies, and procedures is an added responsibility of the Associate Director of Female Offender Programs. While the Department continues to strive for consistency in enforcement of the visiting policies, the assignment of the Associate director has lead to significant improvements in addressing visiting issues.

Visitor processing times and the number of terminated visits are tracked individually by each facility. On a weekly basis, the adult institutions send visiting data to their respective Associate Director, including the number of visitors, inmates participating, and terminations. This information is provided to the Associate Director for compilation of statewide data. Thereafter, the Department utilizes the information to monitor institutional operations and to assess the need for possible expansions.

I am confident that my executive team understands the importance of successful visiting programs and the importance of their contribution to the rehabilitative process. Moreover, they recognize that maintaining positive family ties benefits not only the offenders, but contributes to the safe and secure operations within the facilities. In addition to the monitoring noted above, facility staff address issues raised by inmates, families and community groups as they arise. The Director of the Division of Adult Institutions meets with the statewide IFCI quarterly; and WAG reviews and addresses statewide visiting issues. It is through these collaborative efforts that the Department is able to provide a positive and accessible environment within its visiting programs.

***18. Are you contemplating changes to family visiting or inmate phone call policies as part of recidivism reduction efforts?***

Policy decisions related to family visiting are a definite part of the Department's recidivism reduction efforts. Encouraging visits for family reunification is paramount to reducing violence in our institutions, promoting successful programming of inmates while incarcerated, and is critical to reintegration efforts upon parole.

Most recently, at the request of the inmate families, the Department changed visiting policies to allow families to bring additional money into the visiting area. Ongoing efforts include the establishment of a workgroup comprised of Departmental staff and IFC

representatives who are working on revising the IFC Bylaws. The next steps will be to revise the CDCR Visitor's Handbook.

CDCR telecommunications staff and the Department of General Services have been working to reduce the Inmate Pay Telephone concession fees for several years. These prolonged efforts culminated in the Governor approving the reduction of Inmate Pay Telephone concession fees on August 24, 2007. The impact of the amended contract with the current telephone vendor will limit the amount of state concession fees per a prescribed schedule over several fiscal years (FY), as follows:

- FY 2007/08 – Reduce concession fees to \$19,500.
- FY 2008/09 – Reduce concession fees to \$13,000.
- FY 2009/10 – Reduce concession fees to \$6,500.
- FY 2010/11 – Reduce concession fees to zero.

As Undersecretary, Operations, my staff and I will continue to consider all policies that improve visiting programs and promote safe and secure visiting practices.

### **Reentry Planning, Parole, and Release**

*Corrections administrators have talked about the need to better plan for the reentry of inmates into society, including a process that would provide every inmate with a risk and needs assessment that would be administered upon arrival in prison and utilized in a seamless fashion through parole. The Public Safety and Offender Rehabilitation Services Act of 2007 requires the Department to assess all inmates for the purpose of placing them in programs that will aid their reentry into society.*

*The Los Angeles Times recently reported that last August the state sampled some inmate cases and discovered that in more than half—354 of 679—the offenders were set to remain in prison a combined 104 years too long. Fifty-nine of those prisoners had already overstayed and were subsequently released after serving a total of 20 years too many, an average of four months each. The errors could cost the state \$44 million through the end of this fiscal year, the Times reported, if not corrected, and more than \$80 million through mid-2010. Recently a female inmate was returned to custody with claims that she was not incarcerated for the appropriate amount of time.*

**19. Who is responsible for implementing the risk-needs assessments and what is your timetable for implementation? How often will reassessments be conducted? Who will you hold accountable for ensuring that inmates are administered a risk-needs assessment at the appropriate intervals and are then placed in appropriate programs? How will you measure the effectiveness of the risk-needs assessment and its use within the Department?**



The implementation of the risk and needs assessment process for inmates was undertaken as a joint responsibility of the Chief Deputy Secretary for Adult Programs and the Chief Deputy Secretary Adult Operations at four reception centers in June 2007. The expansion of the instrument to all reception centers began in February 2007 with completion expected in September 2008. The CDCR selected risk and needs assessment instrument is the Correctional Offender Management Profiling for Alternative Sanctions (COMPAS). This tool consists of 33 static risk factors (gathered from the inmate's central file) and 108 dynamic risk factors (determined through offender interviews), identifying criminogenic needs. The COMPAS assessment measures the risk to reoffend (static factors), as well as risk factors that contribute to reoffending (dynamic factors), which are the targets for treatment. The current reception center process targets inmates with new commitments and inmates who have violated their parole and have more than 240 days to serve, as resources are not available to assess the entire inmate population. The proposed Governor's Budget for 2008/09 includes resources to increase the number of assessments conducted.

As Undersecretary, Operations, I am responsible to ensure that the risk and needs assessments are conducted upon intake at reception to prison, and again within 240 days prior to release from prison to parole. The Departmental objective is to use the risk and needs assessment tool to assess all inmates upon reception, utilize the results to help determine program placement through case planning, and reassess inmates prior to release to parole, to aid parole staff in parole supervision and aftercare program planning. Based on the guidance of the Expert Panel Report, the criteria and intervals for any additional reassessments will be included in the Adult Programs case planning process, currently under development.

I expect that when fully implemented, assessments will result in better utilization of existing program resources, improved program outcomes, and reduced inmate idleness, which has proven to reduce violence and enhance staff and inmate safety. I will be responsible to see that operations staff considers the assessment results in prison transfers, program placements, classification committee actions and parole planning. However, it is imperative to note the COMPAS assessment tool is not designed to determine an inmate's custody or security level. The Undersecretary of Programs will be responsible for the identification, development and delivery of evidence-based programs to offenders identified to pose the highest risk to reoffend with an identified need for the available programs. Our counterpart in Administration will be responsible to ensure that rehabilitative programs, as well as the effectiveness of the COMPAS instrument, are evaluated in order to place resources in those programs deemed to have the greatest impact on rehabilitation and recidivism reduction.

As of February 1, 2008, nearly 5,400 assessments had been completed at reception centers. Prison staff have been directed (via memorandum dated February 14, 2008) to utilize the COMPAS assessment when endorsing inmates for transfer. In order to match the level of services to the risk level of the offender, inmates will be housed at



facilities that offer their appropriate custody level, and the programs suggested by the COMPAS assessment.

Full integration of the COMPAS instrument will take time, resources, automation, negotiation with affected unions, collaboration between field and headquarters as well as Operations, Programs and Administrative staff, formal policy development, and a dedicated commitment to its implementation. Over the course of the next 12 to 15 months I anticipate major progress to be made in each of these areas as we evolve and mature as an organization dedicated to corrections and rehabilitation.

***20. Are you satisfied with the inmate parole planning process? How do you evaluate its effectiveness and how can it be improved?***

The foundation of the Department's inmate parole planning process is the COMPAS risk and needs assessment tool. I am satisfied that COMPAS is an effective assessment tool to determine the appropriate supervision level and program needs of parolees. Last May, the Department committed to the legislature to validate the COMPAS risk/needs assessment, and to date, both the COMPAS static risk factors, (predicting risk to reoffend based on criminal history and demographics), and the ease of use for field staff have been validated. The only remaining validation component of the COMPAS tool is its ability to correctly screen dynamic case factors (criminogenic needs), those factors that contribute to reoffending and are the targets for treatment. The tentative completion date for this final validation phase is December 2008.

I am also satisfied that the Division of Adult Parole Operations has made great strides in implementing the COMPAS tool in all California state prisons, assessing the risk and needs of preparole inmates that are between 240 and 120 days from release, and that these assessments are beneficial to successful parole operations. To date, approximately 127,000 COMPAS assessments have been completed as a result of the inmate parole planning process.

However, through my discussions with staff, review of administrative evaluations, and meetings regarding the effectiveness of COMPAS in field operations, I have discovered critical issues that need to be remedied before the Department will realize the full benefit of this tool in effective parole planning. Specifically:

- There are no mandates requiring that parole agents utilize the COMPAS prerelease planning services.
- There are no means to require parolees to attend the identified programs. By law, there must be a violation or nexus to establish a special condition of parole.
- Although a large number of the paroling population have had their program needs identified, there are no community resources available to address those needs.

- The supervising parole agent's role in the parolee's program compliance cannot be understated. As such, the case agent or paroling unit needs to be included in program assignment options and community services.

Recent focus improvement efforts currently underway include, labor negotiations requiring agent use of COMPAS assessments, draft regulations mandating parolee compliance, additional training efforts for field agents scheduled to begin in July 2008, and the incorporation of a COMPAS segment into the parole agent training academy curriculum.

With the expanded use of COMPAS upon intake, incorporating the assessment information into a "case plan" for program assignments, and the identification of triggers for re-assessment, the overall efficacy to the offender rests with the Adult Programs leadership. Adult Programs and Adult Operations equally share in the responsibility to get the offenders to the most effective programs while they are incarcerated, and while they are on parole, to stop the culture of incarceration. However, the participation and behavior of the offender while at the program, and the resolution of custody concerns rests solely with the Undersecretary, Operations. I believe the Department's current contract with the University of California, Los Angeles, to conduct a professional research study to evaluate COMPAS will ultimately be the best indicator of overall effectiveness.

Two improvements essential to the ultimate success of the inmate parole planning process are: (1) Additional programs in the institutions to assist inmates overcome their risks and needs of reoffending, and (2) The identification of additional programming resources in the communities to assist parolees become successful citizens.

***21. Corrections officials and outside experts note that the biggest challenge for many newly released parolees is not just finding a job, but finding a place to live. Who in your agency is responsible for identifying additional housing options for those recently released?***

The Director of DAPO is responsible for establishing parole programs dedicated to assisting parolees find housing. At this time, housing challenges for parolees are met through a combined effort of Parolee Planning and Placement (PPP) staff, the supervising parole agent, and the community agencies contracting with DAPO.

The PPP program staff assigned to each institution complete prerelease COMPAS assessments to identify the needs of each inmate scheduled for release. An individual case management plan is developed, including housing needs and available options. The parole agent can then make a referral for housing based on the case plan.

Upon release from prison, parolees are required to attend the Parole and Community Teams (PACT) program. PACT was developed to link parolees to housing and identify



housing resources developed by Community Resource Coordinators. In addition, DAPO has contracted for programs designed to meet housing needs directly or indirectly through referrals. Many of these contracted programs either have a housing component or individual who refer and/or develop housing resources for parolees. Residential programs for parolees include:

- The Residential Multi-Service Center program offers housing and a variety of other services in a residential setting. This program offers up to six months residential placement, with a 90-day aftercare program.
- The Parolee Service Center (PSC) program provides parolees with housing and additional services necessary to enable successful reintegration into the community. Initial placement in the PSC program is for 90 days and not to exceed one year.
- The Restitution Center Program (RCP) provides housing and sustenance to inmates who owe restitution. The main purpose of the RCP is to help inmates attain employment so they can pay their restitution orders.
- The Community Based Coalition provides services and/or refers parolees to licensed residential and transitional housing facilities. The length of stay is 180 days not to exceed one year.
- The Day Reporting Centers program provides parolees with transitional housing which shall not exceed six months.

The Department agrees locating housing is one of the biggest challenges for newly released parolees. As such, it is imperative that the Department continue its prerelease efforts, encourage family reunification where possible, continue to contract with providers who assist with locating viable housing for parolees, and most importantly, continue to educate communities.

***22. What is your role in helping to design planned reentry facilities, including space for education programs and drug treatment, and ensuring the appropriate programs are in place?***

My primary role related to the design of the secure reentry facilities is to ensure safety. As Undersecretary, Operations, I bring years of experience working in all custody settings and can ensure that the physical plant design meets the necessary safety and security requirements for the classification level of reentry inmate proposed.

To date, I have also visited the proposed reentry sites, including the Northern California Reentry Facility (NCRF) in Stockton, and the Paso de Robles Youth Correctional Facility in San Luis Obispo. After visiting the sites, I provided several recommendations



on more reasonable approaches from the operational perspective. Specifically, at NCRF, I determined the site was operationally ready to house inmates without the need to rebuild or remodel several of the buildings.

My other role as Undersecretary, Operations, is to provide leadership, coordination, assistance and resources for staff to overcome barriers and move the reentry projects along. Our Chief Deputy Secretary for Facilities Management has encountered nearly every possible obstacle and barrier in attempts to move forward since the signing of AB 900. It is my role to bring the issues to the highest levels and assist in overcoming barriers.

All reentry facility designs include the full programming compliment required in AB 900. Once the site is identified and the design is proposed, I review and monitor to ensure that the appropriate custody-level staffing is included for the proposed facility. I reviewed and provided insight on the proposed exclusionary criteria, and other areas impacting secure operations. The responsibility for ensuring the appropriate programs are in place falls under the preview of the Undersecretary of Programs.

***23. What is being done to ensure that inmate release dates are properly calculated? Is training adequate for staff who calculate the length of prison stays? Do you believe salary is sufficient to retain staff who have sufficient training or are there other issues CDCR should address?***

The magnitude of sentencing calculations performed by the Department on an annual basis, combined with the complex formulas often required in calculating release dates, cannot be overstated. Unfortunately, although our staff do an excellent job in performing these duties, one early release is one too many for an organization tasked with protecting public safety.

In response to the recently highly publicized early release, the Department has developed a two-pronged approach focused on training our case records staff. First, to avoid incorrect sentencing calculations, the DAI identified two positions to provide statewide training. This training surge will begin July 2008 and cover all case record analyst staff. Second, the division is reviewing the need to establish a case records academy. The academy would provide much needed ongoing training to all case records analysts, supervisors and managers.

It is critical that the Department do all it can to maintain a foundation of experienced staff in this highly complex discipline. I do not believe the current salary for the classifications in our case records unit is sufficient to retain staff commiserate with the level of responsibility. Staff hired into case records transfer to jobs with much less responsibility and less liability on a consistent basis due to the consequence of errors that may result in public safety issues.

Finally, as an internal quality control measure, the Department is reviewing legal issues related to determinate and indeterminate sentencing regulations to ensure calculation processes are sound in those rare cases where, although very infrequent, legal complexities may arise.

*The Los Angeles Times* article referenced provides only limited information regarding the circumstances surrounding the calculations. The article does not clarify that the calculations referenced were only incorrect after receipt of a newly published court decision requiring the original sentences by judges to be corrected, and not as a result of case records staff calculations. Unfortunately, the Department frequently receives court decisions that affect recorded sentences and require recalculations.

To date, case records staff have completed 78 percent of the recalculations, and is on schedule to complete all recalculations resulting from *In re Tate and Reeves* by June 30, 2008.

### **Board of Parole Hearings**

*Under the 2005 reorganization, a "dotted line" relationship was established between your office and the Board of Parole Hearings, which exercises jurisdiction over inmates serving life terms under the Indeterminate Sentence Law, state prisoners serving specified terms of less than life, and those sentenced to life with the possibility of parole. In 2007 the board scheduled 5,520 hearings for indeterminate life term inmates. Of those, 1,605, or 20 percent, were postponed. This is costly to taxpayers and inconvenient and costly for the victims, families, inmates, and attorneys who have prepared for hearings. The postponements are often due to factors that could have been avoided or at least known in advance, including incomplete files and lack of timely psychological evaluations.*

#### **24. Please describe your role with respect to the Board of Parole Hearings.**

As Undersecretary, Operations, I work collaboratively with the Board of Parole Hearings (BPH) on overlapping and joint responsibility issues to ensure fair, impartial, and timely hearings of parole suitability and parole revocation processes occur. I work closely with the Executive Officer and Chairman of the Board to remedy issues contributing to lifer hearing postponements. In December 2007, I personally met with each Board member to discuss any areas of concern and recommendations for process improvements. Thereafter, I implemented a Departmental workgroup of dedicated staff to find resolutions and resources to address the critical needs reported by the Board. I conduct biweekly meetings with the Executive Officer of the Board, my Chief Deputy Secretary of Adult Operations, and other operational area staff to remedy ongoing postponement issues. To date, these focused efforts, have resulted in the completion of a comprehensive plan for elimination of the lifer-hearing backlog. Most importantly,



the plan includes quality control measures and a process to provide timely psychological evaluations, significantly reducing the rate of hearing postponements.

Board issues are one of my top priorities. I continue to resolve those issues by requiring all departmental resources under my control to collaborate and assist with issue resolution as they arise. Each month, the Executive Officer of the Board provides a detailed executive summary of all postponed hearings and related causes. During biweekly meetings, each operational area updates quality control issues. In the first quarter of this focused effort, I have seen initial improvements and minor decreases in postponements.

In addition to a focus on staff accountability, I am working closely with the Board to ensure that our Departmental Enterprise Information Services assists the Board with all on-going activities related to the new Lifer Scheduling and Tracking System (LSTS).

As part of the ongoing efforts and expectations, I requested the Executive Officer of the Board to develop compliance and exit strategies for current litigation, including *Rutherford/Lugo, Valdivia, and Armstrong*.

***25. Secretary Tilton asked your predecessor to monitor communications on parole issues to identify and focus on specific problems. What is the status of this effort and what other specific systems have you created to improve the activities of the "board desk" at each prison and the coordination between the Department and the board?***

Regular communication, identification of critical issues, immediate corrective action, increased resources, and coordinated efforts between the BPH, DAI, and Parole have been and will remain the cornerstone of my operational oversight as Undersecretary.

Reduction of lifer hearing postponements is of major concern and one of the areas in which I have placed significant focus. Over the past few months, the Department has taken the process apart, and taken the following steps to identify problem areas and curb lifer hearing postponements from 53 percent in January 2008, to 49 percent in February 2008, to 44 percent in March 2008:

- The Lifer Scheduling Tracking System (LSTS) became operational in November 2007, providing immediate access to information on status of the lifer-hearings, and real time information to the BPH and DAI. However, upon identification of problem areas, it was determined not all users were entering the necessary data into the system, and staff needed additional training. My expectation is that LSTS will continue to mature as a database and all users will benefit from its deployment.



- Statewide training on the lifer process was implemented for appropriate personnel at all prisons. Training included identifying time constraints, impact of missed deadlines, LSTS utilization, and proper hearing packet preparation. In February 2007 all classification, parole representatives and Wardens were trained on the importance of the lifer hearing process and the need for continued communication with panel members.
- The Department recently established 10.0 Office Technician positions to provide necessary support at the Board desks of 7 high-volume institutions, (Correctional Training Facility, Avenal State Prison, Chuckawalla State Prison, California Men's Colony, California State Prison Solano, Substance Abuse Treatment Facility at Corcoran, and San Quentin State Prison). At my direction, the hiring of this staff was expedited and all are currently working at the institutions.
- The Department surveyed the field and expedited the purchase of dedicated equipment for every board desk, copiers, fax machines and scanners, to ensure that Board packets are prepared timely and communication is ongoing between the Board desk and BPH staff.
- Board desk personnel will now ensure they provide documentation from the Central File to the Forensics Assessment Division within the BPH between 120 and 150 days prior to the lifer hearing. This cooperative effort between the Board and DAI will assist the Board psychologists with their preparation of the lifer psychological evaluations, the leading contributor to postponements.
- Additional cooperative efforts include the responsibility for classification and parole representatives to ensure they review all Board hearing packets prior to their release to Commissioners, District Attorneys, and Inmate Attorneys, and that the packets contain all required hearing documentation.

In addition to the steps identified above, I have established a Lifer Efficiency Workgroup with representation from DAI and BPH. This group meets regularly to address day-to-day challenges faced by their respective divisions. They are jointly identifying and tackling the day-to-day operational factors contributing to backlogs and hearing postponements. The coordination between the DAI and BPH has markedly improved since the inception of the workgroup, and I expect to keep it in place as we continue to reduce the lifer hearing postponements.

***26. How is the board informed of or involved in CDCR's risk-needs assessment plans?***

The Board is included in the CDCR workgroup organized by the Center for Effective Public Policy for the Division of Adult Parole (DAPO). As a member of the workgroup, BPH is exposed to the Department's strategies for recidivism reduction using risk

assessment and decision making tools. On an ongoing basis, BPH management and staff are included in CDCR and DAPO presentations and training workshops to keep apprised of current risk-needs assessment plans.

***27. When an inmate is denied parole suitability, he or she is often advised by the parole board member to enroll in a very specific program, such as anger management, or take up a new vocational program. What is the process of communication between prison staff and the board on the type and availability of programs for lifers sentenced with the possibility of parole and how is follow up monitored?***

Each inmate who has a parole suitability hearing must be seen by the Unit Classification Committee at his/her institution within 15 days after receipt of the Board hearing decision. At this classification hearing, the committee reviews the recommendations made by the panel members during the Board hearing. When the panel recommends an inmate to a specific program such as vocational or treatment, the inmate is provided with information required to enter the program. However, there are often circumstances in which panel members recommend a trade or vocational program which may not be available to the inmate due to circumstances beyond the inmates' control, e.g., if an inmate has a custody designation which may not allow him/her to obtain gate pass clearance to participate in a trade. When this situation occurs, it is documented by the classification committee and available for the panels review at the next suitability hearing.

This issue came up during my interviews with each of the Commissioners. I specifically asked each of them if they were aware of the programs offered at each institution. While there are several variables to the process, the primary issue is two fold. (1) Many of the Commissioners work at different institutions during the month, and are unfamiliar with each institution's different program options, and (2) Many Commissioners have neither been afforded the time to observe the different programs nor have they been provided with training on the various program options and benefits.

As part of my oversight of this issue, I have directed staff to develop program overview sheets for each institution to assist the Commissioners in their assignment of programs. Additionally, I have requested the Executive Officer to provide time for DAI staff to provide program training to the Commissioners, including an overview of the classification process, during their Board meetings. Finally, I have requested that the Wardens at each facility meet with Commissioners during their workweek, and provide extraordinary service to the Commissioners to assist them with the hearing process. This includes everything from ensuring the hearing room is set up, to ensuring inmate escorts are timely, computers are accessible, Board desk staff make additional copies, and program overview sheets are available as a tool for panel members to refer inmates to appropriate programs within their assigned institution.

Currently, the Executive Officer of the Board is working with Adult Programs to identify additional program needs for inmates sentenced to life terms, and to develop a training module for Commissioners to help identify program opportunities in CDCR.



JOHN H. HAYASHI

April 30, 2008

Senate Rules Committee Appointments Director, Room 420  
Attn: Nettie Sabelhaus,  
State Capitol, Sacramento, CA 95814

**Senate Rules Committee**

MAY 07 2008

**Appointments**

Dear Senator Perata:

The Senate Rules Committee asked questions for a confirmation hearing on my reappointment to the Water Quality Control Board, Central Coast Region, scheduled for Wednesday, May 28, 2008. You said I will likely not be required to appear in person, but you requested that I respond in writing to the following questions by May 9, 2008. You asked that I provide answers in my own words, not those of staff. However, you have asked for details that required me to get some information from staff, as I don't carry all this information around in my head.

You also asked for an updated Form 700, Statement of Economic Interest, by May 9<sup>th</sup>. I sent you that form on January 10, 2008.

My answers are inserted after your questions:

#### **Statement of Goals**

1. *Since 2000 when you were first appointed, what have been your most significant accomplishments as a member of the Central Coast Regional Water Quality Control Board?*
  - a. *We found that we had a huge perchlorate problem in the northern part of the region but our aggressive actions have caused big improvements.*
  - b. *With the long standing Los Osos septic system issue, our increasing/progressive enforcement actions in the last few years have led to the County now making good progress toward a solution.*
  - c. *The Ag industry has worked with us cooperatively in the last six years to resolve significant surface and groundwater problems in our region. We have a high rate of compliance with enrollments for our program (we have a total of about 1800 enrolled irrigated farming operations, representing about 93% of the 438,000 acres of irrigated farmland in our region), and with our requirements for improved farm practices; and the industry has a monitoring coalition to carry out required monitoring.*

2. *What do you hope to accomplish during your current tenure as a member of the board? What goals do you have for the board, and how will you accomplish them? How will you measure your success?*

*Our vision is to maintain or help create healthy watersheds. We have articulated measurable goals for surface water and habitat, sustainable land use, clean groundwater, and assessment in order to achieve our vision. Our region has quite a bit of development pressure, and traditional development with urban sprawl will decrease the ability of our watersheds to function as healthy watersheds. With the high demand and overuse of water in many of our watersheds, we need to protect the sponge-like characteristics of the watersheds so that they retain the maximum amount of water. Otherwise, we will decrease their sustainability in terms of water supply and fish habitat. For example, non-sustainable watersheds have lowered groundwater tables which 1. reduce base flow in our creeks and eliminates habitat, 2. cause salt imbalances, and 3. cause seawater intrusion. Our Board has been championing Low Impact Development (LID) and riparian buffer areas so that urban sprawl does not destroy the ecological function of our watersheds, and we are making good progress with our municipalities in moving toward LID. Our Board approved funding for a Central Coast LID Center to provide assistance to our municipalities and we need to work with our non profits and other coordinating agencies toward getting that Center up and running and providing the right kind of assistance to ensure our inevitable development is low impact. We will measure our success through tracking the development types approved by our municipalities, by the amount of impervious materials used in those developments, and by our own Central Coast Ambient Monitoring Program, one of the premier monitoring programs anywhere.*

3. *What do you believe are the most serious issues facing your board?*

*Overall, we have serious groundwater problems, with the Olin site being the highest priority single site due to thousands of people losing the use of their drinking water wells from perchlorate concentrations exceeding limits. Although we have aggressively overseen cleanup and have realized great improvements, it is still extremely serious, with hundreds of people still relying on bottled water or wellhead treatment. We also have many surface waters with high toxicity and nutrients, from both urban runoff and agricultural operations, with irrigated ag operations also typically having underlying salt and nitrate problems in groundwater. Our fisheries are in decline, and they will be assisted by having the watersheds that drain to the ocean restored to healthy conditions. The food safety issue has caused ag operators to be caught between buyers' demands to eliminate vegetation near crops (for fear of rodent and other wildlife habitat) and water quality demands from the filtering benefits of vegetated buffer areas. We need to resolve this conflict and get away from unreasonable pressure to scrape large swaths of barren land, as that eliminates the benefits of vegetated areas. We are also taking actions to assist the ag industry improve irrigation and fertilizer efficiencies. Even relatively minor improvements in those two areas will help greatly with runoff*



*associated toxicity and nutrient problems, with groundwater quality problems, and with overdraft that causes seawater intrusion, most notably in Salinas and Pajaro Valleys.*

4. *How does your board help the public understand the state of water quality in your region? Where should the public go for information on water quality issues such as beach closures, sewage spills, or the overall quality of water in rivers and streams in your region?*

*One of the features that sets the Water Boards apart from department-type organizational models is that we have regular public meetings where the public can speak their minds and listen to the deliberations and actually get their decisions on the spot. This is not true with agencies such as U.S.EPA. Stakeholders can state their opinions to our Board and they can ask questions and get answers. They can participate in our deliberations and workshops on our region's water quality issues. Regarding your specific questions, we have an enforcement report in every agenda. It lists spills and is accessible on our web site. Our 380 miles of coastline includes five counties, with drainage from four more counties. All of our coastal counties have web sites with postings of closures and warnings (and as of this writing, we do not have a single posting for any of our region's beaches). Our web site includes our Central Coast Ambient Monitoring Program (CCAMP), with a data browser that contains maps with graphical indicators, tables, graphs, etc., for the public to find out about overall water quality in our region. We also provide individual monitoring site information, including photos, as well as complete information on impaired water bodies, the constituents, and the sources.*

### **State and Regional Board Roles**

The issues addressed by regional water boards are often scientifically complex. Preparation for hearings can be time consuming for Board members, particularly considering that these are part-time positions.

5. *Who is available to assist you at the state board and your regional board to better understand some of the complex issues before you? Do you have any suggestions on how the state water board's staff might better assist you?*

*At the State Board, we have a wide array of support for the regions, starting with our new member initial briefing from the Chief Counsel. We then have continuing education opportunities at our statewide Water Quality Coordinating Committee (WQCC) meetings for all State Water Board members, usually twice a year. These meetings are typically two days and provide a great forum for discussing our approach to the varied and complex issues before us. The State Board also adopts or amends state policy on a variety of issues, which then provides guidance for us in dealing with individual situations that fall within the purview of those policies. Recent or currently active policy*



actions include policies on recycled water, individual on-site treatment/disposal systems, once-through cooling water, Areas of Special Biological Significance, and time schedules for compliance. The State Board has another avenue for establishing precedents, and that is through its role as the appellate body for Regional Board decisions. Those petition reviews and results provide all the regions with guidance on how to deal with issues that are similar to petitioned cases. Our Regional Board counsel works for and has her office in the State Board's Office of Chief Counsel, and this arrangement provides for close communication between us and the State Board. Our staff has various roundtable type meetings with all the other regions and State Board staff to deal with common issues throughout the state, which provides information that assists our staff in bringing items to our Board that benefit from statewide coordination and assistance, and increases our ability to achieve appropriate consistency statewide. These efforts represent a huge amount of effort to increase our understanding and capabilities to deal with complex issues, and seem to be working pretty well, at least from my perspective.

6. What training have you received to help you better understand when you might have a conflict of interest regarding an issue on your board's agenda? How do you know when to withdraw yourself from voting on an issue? Have you ever done so since being appointed to this board?

See above regarding our briefings by the Chief Counsel. Also, a standing item in our WQCC meetings is an in-depth discussion with the Chief Counsel which provides ongoing training on legal and conflict issues. These sessions provide a good foundation for avoiding or not creating conflicts and for knowing when I might have an unavoidable conflict. We then have our own Board counsel to provide legal guidance regarding any potential conflict, which provides me with the information I need to decide whether or not to withdraw. I have had to recuse myself on very few occasions; they have been related to my agriculture business.

The Porter-Cologne Water Quality Control Act generally establishes the relationship between the state and regional boards. Regional boards usually set water quality goals in their basin plans, develop Total Maximum Daily Loads (TMDLs), and enforce permit and discharge requirements as well as state and federal water quality laws. However, regional board budgets are not reviewed individually by the Governor or the Legislature, and most regional board staffing decisions are made at the regional level, not at the state level.

The state and regional board structure has been criticized by both industry and environmental groups for being cumbersome and lacking accountability, efficiency, and transparency. Both sides note that major policy issues often are decided through the state board appeals process instead of through a consistent statewide policy that is proactively established by the state board and implemented by the regional boards.

7. *What is your view of the relationship between the state board and your regional board? Could coordination and accountability be improved? If so, how?*

*See answer number 5. In terms of my perspective from the Board level, we have good coordination. We have a State Board member assigned as liaison to our Board. Our current liaison, Dr. Gary Wolff, does a good job of attending our Board meetings as often as possible and providing an update for us on what's happening with the State Board and with other Regional Board activities that have statewide significance. We have good accountability, with monthly budget and personnel reports to our Executive Officer from the State Board and we have a good grants management program to ensure accountability. We recently had two audits, one for overall fiscal transactions and procedures for our office, and one for our grants management. The auditors informed us in the exit interviews that we were doing very well. Such audits are a significant tool to ensure that all regions use sound practices and are accountable.*

8. *How is your board able to address, within its current funding levels, the state and federal laws you are charged with enforcing? Are there issues you believe get less attention than they need due to current funding levels and constraints on resources?*

*As with any operation, there is always more that could be done within the various programs that are within our charge, than we have the staff or the money to do (see discussion below regarding the TMDL program). And as with any operation, public, private, or non-profit, we must prioritize and figure out the most resourceful manner to use our budget in the most effective manner to accomplish our goals and requirements. We do a good job in that regard. Our region is typically among the top performers in many categories that the State Board tracks, such as enforcement backlog, permit backlog, TMDL accomplishments, inspections, upkeep of our compliance database, etc. We are frequently the leaders in the State in tackling the important issues in innovative ways. We are providing significant assistance in the State's effort to deploy the Paperless Office system. At the last statewide coordinating meeting, our region was THE example for using electronic monitoring reports rather than paper, and the State Board directed all the other regions to follow suit. Monitoring experts from outside of the state system have judged our regional monitoring program, CCAMP, as the best in the state, and it could very well be the best of its kind anywhere. Assessment has been a priority for our region for the last 14 years that we have been building CCAMP, because we cannot carry out the programs to implement the laws effectively without having that feedback data to inform us of whether we're doing the right thing for our watersheds and water quality, and to inform us of how we should implement the laws and regulations in a different manner to be more effective. As I said, there's always room for improvement, and there have been times where we can see in hindsight that we should have inspected this site more frequently, or we should have taken an enforcement action on that site sooner. Perhaps with more funding we could have done so (maybe we still would have missed it), but the key is to learn from those experiences and to*



*make strategic decisions going forward about how to use the allocation we have most effectively. For example, we've been criticized for not allocating more staffing to timber regulation. However, we streamlined the approval process by adopting general conditions and monitoring guidelines that allow for about 90% of the applications to be processed by our staff administratively, rather than all of them having to come to our Board individually. And with rules in our region prohibiting clear cutting (selective harvesting only) and having stringent stream protection criteria as a baseline, we are accomplishing the goals of eliminating sediment, turbidity, and temperature problems from timber operations, while still staying within our budget allocation.*

### **Cleaning Up Polluted Waters**

Governor Schwarzenegger has stated in his Environmental Action Plan that he will fully implement existing water quality programs, such as municipal storm water permit programs and TMDLs programs, which are required under the Federal Clean Water Act to improve water quality by limiting the amount of pollutants allowed into water bodies.

Currently, regional water boards lag far behind their adopted schedules for cleaning polluted or impaired waters, and existing monitoring programs make it difficult to identify other waters that may be polluted.

9. *Please describe the status of your board's TMDLs process. Does your board have adequate resources to develop and implement the required TMDLs?*

*Status:*

*We have 13 approved TMDLs, representing 29 waterbody/pollutant impairments (listings) on the Clean Water Act Section 303(d) List of Water Quality Limited Segments (Impaired Waters List).*

*Our staff is working on an additional 11 TMDL projects, representing 43 listings. Our adopted TMDLs and TMDL projects in development stage add up to a total of 24 TMDL projects representing 72 listings. For perspective, we have 182 listings on the 2006 Impaired Waters List, and TMDLs must be developed for all 182 listings. We estimate it will take us an additional 15-20 years to develop our remaining TMDLs, and implementation will be ongoing for decades.*

*We have five staff persons working full time on scoping and developing TMDL projects, and additional staff resources to direct the program and supplement the project work when needed.*

*We follow the State's Guidance, A Process for Addressing Impaired Waterbodies in California, tailored with Central Coast operating procedures and systems. For example, as I've stated in answering one of your other questions, our Region has one of the best*



*ambient water quality monitoring programs in the state, the Central Coast Ambient Monitoring Program. Therefore, our staff can rely on our own program's data collection and analysis to form the foundation for TMDLs.*

*Our Central Coast Ambient Monitoring Program activities have generated a large amount of data that has been used to identify water bodies that are polluted and require listing. 40% of the listings (as of 2006) have been generated by data collected by our own monitoring activities in the past two listing cycles. For perspective, we have identified approximately as many new listings from our monitoring activities as we have TMDLs either completed or in the development stage.*

*Staff needs about two to four years to develop a TMDL with a comprehensive implementation plan for a typical watershed in our region and to present it to our Board for approval.*

*The length of time and the resources depends on the available information, data, and complexity of the pollution sources and regulatory mechanisms.*

*Once we adopt the TMDL, the complete approval process, beyond our Board, will take a minimum of 10 months. Staff and responsible parties often begin implementing actions even before a TMDL is approved. However, our TMDL implementation plans typically require implementation activities to begin one year after approval of the TMDL. This timeframe allows staff and the responsible parties to incorporate new regulatory responsibilities or actions into daily operations and budgets.*

*Our staff typically begin formal tracking of TMDL implementation progress (implementation actions and water quality monitoring) three years after TMDL approval, and continue to review progress every three years until the TMDL is achieved.*

*To answer your questions about adequate staffing for implementation, many of our TMDLs were approved over three years ago, and staff is now directing implementation activities for those TMDLs. By being resourceful, and capitalizing on funding for other complementary programs, we have adequate staffing to implement TMDLs in the following manner. Some of the implementation activities are coincident with existing Board programs and are implemented by existing staff in those programs. For example, when a TMDL includes an allocation for pollution reduction assigned to a municipal storm water management agency, that agency must implement appropriate pollution controls via storm water management programs required by the Clean Water Act National Pollutant Discharge Elimination System for storm water discharges. In that case, existing staff issuing municipal storm water permits and evaluating compliance with municipal storm water management programs "implement" the TMDL actions to achieve those allocations. However, in other cases, implementation activities require our staff to issue new permits or determine compliance with new prohibitions on discharges previously unregulated (such as irrigated agriculture or grazing operations).*

*In that case, we must balance assigning more staff for these implementation activities with assigning staff to continue developing TMDLs and implementing permitting and compliance associated with existing programs.*

**10. How will the board monitor and enforce the TMDLs it has or will adopt?**

*We establish enforceable mechanisms and requirements in TMDL implementation plans. If an approved TMDL includes an allocation for pollutant load to a responsible party, staff or our Board issues orders to require implementation of identified pollution reduction actions, monitoring and reporting to the Board. The orders are often associated with existing or newly developed National Pollutant Discharge Elimination System permits and Waste Discharge Requirements, or with discharge prohibitions. Our staff will track compliance with the orders and submittal of the required information. Our Board will take enforcement actions for failure to comply with the orders and will use the required monitoring data to determine if the TMDL is being achieved. Staff reports on the status of TMDL implementation and compliance regularly to our Board.*

*Where appropriate, staff coordinates monitoring requirements for TMDLs with existing monitoring activities through the Central Coast Ambient Monitoring Program and other affiliated monitoring efforts, such as the Central Coast Cooperative Monitoring Program for Agriculture. These programs are set up to detect long term trends and thus can effectively serve to monitor success of TMDL implementation for some important parameters.*

### **Enforcement of Water Quality Laws**

Three years ago the Office of the Secretary of Cal-EPA reported to the Legislature on environmental enforcement and suggested that the state and regional water boards were among the worst agencies in enforcing the law. The report stated that the boards were very slow to enforce clean water laws, almost never sought criminal penalties for serious violations, and generally did not aggressively pursue violators.

**11. What enforcement options do you believe provide the most effective tools for violations of board orders?**

*The water boards have a wide variety of enforcement options available when violations of board orders occur. The main objective of enforcement is to bring the violator into compliance. Options include informal discussions, notices of violations, cleanup orders, cease and desist orders, time schedule orders, and monetary penalties. Any of these alone or used in combination can be effective in achieving compliance. Selecting a particular method depends on factors such as the type of violation (e.g., spill, permit limit exceedance, failure to submit reports), the severity of the violation, the*



*environmental damage caused by the violation, the compliance history of the violator, and who the violator is as a consideration in what action will be effective. When the selected option is a monetary penalty, our objective expands to include demonstrating to the public and industry that we value compliance and a level playing field, and we advertise the penalties to act as a deterrent for other would-be violators. Fortunately, we have not seen evidence of very many instances of criminal activity, but when we do, we do pursue criminal penalties. We have worked cooperatively with the Attorney General's office, the District Attorneys, the U.S. Attorney, the Department of Fish and Game, the FBI, and US EPA on criminal cases that have resulted in successful criminal prosecution. One case resulted in significant jail time. We have also achieved some of the largest settlements of cases. One case we pursued resulted in the largest Clean Water Act violation settlement in the nation. Other cases have resulted in settlements of \$43M, \$18M, \$5M, etc. Our Executive Officer was the first in the state to issue a mandatory minimum penalty complaint shortly after that legislation was signed. We have been aggressive with enforcement. We always seek cooperative compliance, and that is primarily what we achieve, but I see enforcement as an extremely important and necessary tool of an effective regulatory program.*

12. *What role do you believe fines and penalties should play in enforcing the Porter-Cologne Water Quality Control Act? When are fines and penalties not appropriate?*

*Penalties play an essential role in enforcing water quality laws. The Central Coast Water Board's history of issuing penalties demonstrates that the board is not adverse to imposing penalties when they are warranted. We believe that penalties have a significant deterrent effect across industries, and we also believe that some parties that we regulate may be tempted by financial incentive to violate permits and laws. Predictable, consistent use of penalties reduces the financial incentive to violate.*

*Penalties are not appropriate for every violation, nor do the water boards have the resources to bring penalty actions in even a majority of violations. Violations range very widely in severity and environmental effect. Recognizing resources constraints, the use of penalties has to be prioritized to concentrate on the more egregious violations and violators, and must be designed to produce the largest effect possible in return for the investment in resources. As stated above, we have to be strategic and capitalize on the deterrent effect of the enforcement actions that we do take. For example, years ago, we had a poor rate of compliance in the underground tank program with required monitoring report submittals. We issued penalties for an initial batch of violators, and sent letters to all responsible parties saying here's what we're going to do if your reports are late. Even though the penalties were very small, we achieved a huge increase in compliance. Similarly just recently, we dealt with a few hundred non-filers for our ag program by sending out notices of violation. That caused an increase in filers. We then followed up with a strategic handful of monetary complaints and advertised that action in ag newsletters. We had a big positive response in the compliance rate. The CHP has*



*to be strategic as well. Drivers know there might be a CHP plane clocking them, and that is a deterrent to speeding. If drivers see a CHP officer, they know that officer cannot pull everyone over, yet they all slow down. We too must leverage our enforcement actions. That's why we advertise our actions and potential actions to increase compliance.*

### **Los Osos/Baywood Park Septic System Prohibition Zone**

Since 1988 onsite septic systems have been prohibited in the Los Osos/Baywood Park area south of Morro Bay. Fecal coliform bacteria has migrated from the shallow groundwater around Los Osos to the Morro Bay Estuary. A 2000 board order required the Los Osos Community Services District to construct a community sewer system by August 30, 2004. Such a community sewer system has never been completed. Over 1 million gallons per day of septic tank effluent are discharged and migrate to groundwater. Much of this discharge flows wet and seeps into Morro Bay at the shoreline.

13. *Why has it taken 20 years for the board to deal with prohibited septic systems in the Los Osos/Baywood Park area? How is the board dealing with the issue, and what is its timeline for a solution?*

*After our Board took enforcement action (Basin Plan prohibition of discharge, which made existing discharges illegal and prevented any new discharges). The County of San Luis Obispo started on a project for its Los Osos County Service Area. That type of major public works project, even in the best of cases, typically takes several years. In this case, the County was strung out many years longer than the best case scenario due to opposition to various features of different alternatives, and litigation at various steps of the way that had to be resolved by the courts before the county could proceed. The County finally got a project to a permittable stage in '97 and went to the Coastal Commission for a necessary permit. Some community members lobbied the Coastal Commission to not issue the permit, saying they had a better option, developed locally instead of by the County. The Coastal Commission denied the County's permit, and told the attendant protesters that they should have a Community Services District and they should develop their own option. In '98, the CSD was born, and they started all over again with a multi year project development. We did take additional enforcement action (Cease and Desist Orders) against first the County, and then later the CSD. However, as long as the County and later the CSD were proceeding as quickly as possible, it was not appropriate for us to take additional enforcement action such as monetary penalties. After all, one of the significant stumbling blocks was complaint about affordability.*

*After several years, the CSD got further along than the County had, and the wastewater management project was actually in construction. However, the composition of the CSD board changed, and the CSD stopped construction in October 2005. Since this*

*delay in the project was no longer beyond the responsible parties' control (as had been the case with previous delays), we did take immediate enforcement action, adopting penalties of \$6.6M. We also began with a relatively small batch of enforcement actions (Cease and Desist Orders) against the actual dischargers, the individual system owners. This action was consistent with the approach I discussed above in answer 12. The word went out that we were serious. Our escalated enforcement action was a primary factor in the County taking over the project from the CSD, and the County is now moving along very well with final design scheduled for completion late next year and then about 2.5 years for construction. It's important to note that the County took over the project initially on its own dime. In order for the County to continue with its project, the community had to vote on and pass a very expensive assessment district. The community did so with a nearly 80% approval, which was phenomenal for a project of this magnitude and cost.*

## **Perchlorate**

When previous Central Coast Regional Water Quality Control Board members came before the Senate Rules Committee, they discussed a perchlorate plume that stretches seven miles from Morgan Hill to the outskirts of Gilroy. That plume has now grown to 9.5 miles. In 2000 the board found the Olin Corporation responsible for an underground plume of perchlorate which has impacted more than 800 drinking water wells. As part of a court order, Olin was required to deliver bottled water to households with contaminated wells.

Since then, a number of cleanup and abatement orders have been issued that require cleanup and remediation of perchlorate contamination.

14. *What steps is your board taking to address the perchlorate problem? What types of monitoring and groundwater treatments has the board ordered? Is the groundwater being treated or cleaned up?*

*Clarification – The plume has not “grown” from seven miles to 9.5 miles recently as indicated in the statement above. Ongoing characterization activities re-defined the extent of the plume from seven miles to 9.5 miles. The plume is in general equilibrium and has likely been this size for many years.*

*In December 2007, the Central Coast Water Board issued Cleanup and Abatement Order No. R3-2007-0077, which rescinded our previous Cleanup Orders, but did not remove any requirements of the prior Orders. Yes, Olin is cleaning up. Olin is implementing the following cleanup, characterization, and monitoring activities under requirements from the Central Coast Water Board:*

*Onsite Groundwater Treatment and Containment: The onsite groundwater treatment system continues uninterrupted operation in the shallow and upper intermediate*



aquifers. Under our orders, Olin began the treatment system operation in February 2004. Groundwater is extracted at a rate ranging from 50 to 175 gallons per minute (gpm). Extracted groundwater is filtered, and perchlorate is removed using a perchlorate specific ion-exchange process. The treated groundwater is re-injected onsite in the shallow aquifer. Under our oversight, Olin continues to evaluate the effectiveness of the extraction and re-injection system that has been extracting perchlorate for over four years, to ensure effective hydraulic control of the perchlorate plume in the shallow and upper intermediate aquifer.

*Off-Site Investigation and Cleanup Activities - In accordance with Cleanup Order No. R3-2007-0077, Olin has achieved the following:*

*Shallow Zone: Characterization activities are complete in the shallow aquifer and concentrations are decreasing due to the effectiveness of the onsite hydraulic containment and natural attenuation processes*

*Intermediate Zone: Olin completed characterization of the intermediate aquifer. Olin also completed installation and testing of an intermediate aquifer zone extraction well. Olin is currently designing the piping infrastructure and treatment system to hydraulically contain groundwater with concentrations greater than 11 micrograms per liter [ $\mu\text{g/L}$ ] of perchlorate (Priority Zones A and B) in the intermediate aquifer. Groundwater extraction to achieve hydraulic containment will begin in October 2009.*

*Our Cleanup Order No. R3-2007-0077 requires all domestic wells with perchlorate concentrations greater than  $7.9 \mu\text{g/L}$  be fitted with wellhead treatment to remove perchlorate. Those well users that are over the drinking water standard of  $6 \mu\text{g/L}$ , but less than  $7.9$ , are likely to have concentrations reduce to below the standard more quickly than those with higher concentrations, and in the meantime, we have ordered Olin to supply alternative water (typically bottled water) for those well users. See information below about reductions in concentrations and the resulting significant decrease in need for bottled water.*

*Deep Zone: Olin continues to conduct deep aquifer characterization to delineate perchlorate concentrations. During 2008, Olin completed installation and groundwater development activities at 11 deep aquifer monitoring wells. Olin submitted their plan for hydraulic containment of the deep aquifer on April 15, 2008, as we ordered Olin to do.*

*Monitoring and Reporting Program: Our staff is updating, revising, and consolidating all monitoring requirements into a consolidated monitoring program. The new monitoring program will include a detailed monitoring well network to ensure that perchlorate concentrations are effectively monitored in specific areas of the plume, and that increasing trends in groundwater with perchlorate concentrations near  $6.0 \mu\text{g/L}$  (perchlorate maximum contaminant level) can be identified prior to these concentrations reaching domestic supply wells. The monitoring program will also determine the*



*effectiveness of Olin's hydraulic control efforts and monitored attenuation downgradient of the hydraulic containment zones. Results from this new monitoring program will also provide information to determine if/when a contingency alternative must be implemented to ensure timely cleanup.*

15. *Has the Morgan Hill to Gilroy perchlorate plume been stabilized? Have any additional drinking water wells been affected by the plume, including municipal wells?*

*In general, the Olin perchlorate plume is stable or shrinking, and perchlorate concentrations continue to decrease throughout the majority of the plume. However, there are some localized increases in perchlorate concentration, perhaps reflecting concentration analytical variability. As a measure of the overall decreasing trend in perchlorate concentrations, in the fourth quarter of 2007, a total of 35 domestic supply wells had perchlorate concentrations greater than the maximum contaminant level of 6.0 µg/L compared to 190 domestic supply wells during the first quarter of 2004. The City of Morgan Hill municipal supply wells all have low detections of perchlorate less than 4 µg/L, with the exception of the Tennant Avenue Well (current average of 5.7 µg/L, which is better quality than the drinking water standard of 6.0).*

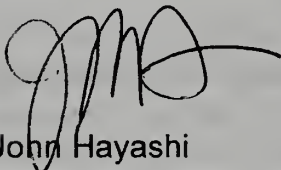
16. *How does your board help the public understand and stay informed about this issue?*

*Early on we recognized the need for extraordinary efforts to assist the public affected by this huge site. We worked to establish a community group to meet and form a network for communication in both directions. Central Coast Water Board staff meets regularly with the Perchlorate Community Advisory Group (PCAG) at the regularly scheduled meetings in San Martin (Santa Clara County). The public is copied on all correspondence from the Water Board regarding the Olin site and the public can obtain all of the Olin reports from the Water Board FTP web site and the local San Martin Library. The Central Coast Water Board also sends Board meeting agenda notices and staff reports to all interested parties for meetings when updates on the Olin cleanup case are presented, and although we have written updates and opportunities for public discussion at all our meetings, we try to schedule our more significant items regarding this site for our northern Board meetings. We rotate our meetings around our 300-mile long region to make the Board more accessible to the public and local agencies. At our meeting last month in Salinas (northern part of our region), PCAG Chair Sylvia Hamilton said that while PCAG would like to see even faster cleanup results, she thanked our staff and Board for doing a great job with the site and with communication with PCAG. Here's a quote from her at our meeting last month, courtesy of our web site's audio links that we have for every Board meeting: "I have to stress how grateful I am that we have PCAG, that you have authorized the formation of PCAG, and that your staff has been*

*there regularly and has been so great about responding to questions, etc... We applaud you...a great deal has been accomplished and we're proud to work with all of you."*

Thank you for your consideration of my volunteering to continue to serve our region and state.

Sincerely,

A handwritten signature in black ink, appearing to be 'JH Hayashi', with a long horizontal stroke extending to the right.

John Hayashi  
Central Coast Regional Water Quality Control Board Member

**Statement of Goals**

1. Since 2005 when you were first appointed, what have been your most significant accomplishments as a member of the Central Valley Regional Water Quality Control Board?
  - a. Attended every formal meeting of the Board since my appointment, and participated fully in the Board deliberations. Worked to improve the communications between Board members, staff and stakeholders. Served on the nominating committee for the current (2008) term.
  - b. Brought the perspective of a research scientist to the Board, particularly as related to fish and wildlife and their needs. Worked to highlight the plight of our fish and wildlife resources as related to our water quality decisions.
  - c. Represented the Board on the Technical Issues Committee of the Irrigated Lands Conditional Waiver Program. Worked with the TIC members to bring science based decision making to the development of the monitoring and reporting elements of the program.
  - d. Co-chair, with Dr. Karl Longley, the Central Valley Salinity Task Force, in conjunction with the SWRCB and a large group of stakeholders from throughout the State (CV-SALTS). Participated in the meetings of all four committees of the group.
  - e. Serve as the Sacramento-San Joaquin Estuary (Delta) representative for the CV Regional Board, putting my experience and training in the Delta to use in this complicated arena.
  - f. Worked to see that the water quality of the Sacramento-San Joaquin Estuary was fully considered in our actions.
2. What do you hope to accomplish during your current tenure as a member of the board? What goals do you have for the board, and how will you accomplish them? How will you measure your success?
  - a. I hope to continue our efforts with the CV-SALTS program, so that it is not just another planning effort, but rather, one that results in an implemented solution to the problem of salt accumulation in the San Joaquin Valley. Ideally, leadership of the program would be turned over to the stakeholders, who would organize as a body with authority to solve the problem. A template for such an entity exists in southern California.

**Senate Rules Committee**

-1-

MAY 09 2008

May 7, 2008

**Appointments**



- b. I will continue efforts to improve communications both within the Board, and between the Board, staff, and our customers. This will require us to accommodate non-English speakers in our activities.
- c. I will continue to build the case for adequate funding and staffing for the Water Boards. Until we secure full funding for these activities, I will work to ensure that the "triage" process focuses on the highest priorities in each funding source, in a manner which respects the legal requirements for our activities.

3. What do you believe are the most serious issues facing your board?

I believe that finding adequate resources to meet our obligations is the most serious issue facing the Board. Finding adequate resources is generally assumed to mean obtain more, but I believe one first needs to review the existing staffing and their utilization, to ensure that the existing resources are being fully and properly expended. This review should begin within the Region we should then look at the Regions as a whole followed by the Regions and the SWRCB.

Only after the existing resources are fully accounted for, would we then proceed to prepare Budget Change Proposals, as needed, to seek those additional resources. The requests, based on the workload that cannot be addressed by the existing resources, would be part of the normal budget cycle.

4. How does your board help the public understand the state of water quality in your region? Where should the public go for information on water quality issues such as beach closures, sewage spills, or the overall quality of water in rivers and streams in your region?

The Water Boards, including the Central Valley Regional board, seek to inform the public through press releases, of the state of water quality within the region. In addition, for emergencies such as sewage spills, permits require the discharger to notify the Regional Board, the local health department, and other agencies as appropriate, as well as posting the contaminated waters with warning notices to the public.

Finally, for chronic water quality issues, lists of impaired water bodies within the Region are published on a regular basis, describing the impaired water body, the nature of the impairment, and any health advisories.

***State and Regional Board Roles.***

5. Who is available to assist you at the state board and your regional board to better understand some of the complex issues before you? Do you have any suggestions on how the state water board's staff might better assist you?

Staff of both the State Board, and the Regional Board, are readily available to assist the Board Members in developing an understanding of the issues which come before the Board. Because of my proximity to Sacramento, it is perhaps easier for me, than for Board members residing at the periphery of the Region, to obtain such assistance. However, much of the help can be dealt with by e-mail, making it readily available to all Board members.

6. What training have you received to help you better understand when you might have a conflict of interest regarding an issue on your board's agenda? How do you know when to withdraw yourself from voting on an issue? Have you ever done so since being appointed to this board?

- a. I have received personal briefings, and group training, from the Office of Chief Counsel, along with personal coaching by staff attorneys, on issues specific to my situation.
- b. I have taken, and often refer back to, the self-paced training module on the subject, offered by the Office of the Attorney General.
- c. Beyond the training, legal counsel are always available to assist with our evaluation, and decision making, regarding this controversial and critical part of our role as Regional Board Members.
- d. To date, I have not had to withdraw from voting on an issue. My training, and advice from counsel, has allowed me to avoid situations which could have led to a withdrawal from voting on an issue before the Board.

7. What is your view of the relationship between the state board and your regional board? Could coordination and accountability be improved? If so, how?

I perceive a relatively good working relationship between the two Boards', due in part to the Water Quality Quarterly Coordination (WQQC) meetings and to the assignment of a State Board member to work with our Regional Board, for this purpose. We would undoubtedly benefit from greater opportunities for such interactions, but the costs of travel, meals and lodging are significant, so we make do.

Making video conferencing available at all of the board offices would be a major step in the direction of improving coordination and accountability without the travel related costs.

8. How is your board able to address, within its current funding levels, the state and federal laws you are charged with enforcing? Are there issues you believe get less attention than they need due to current funding levels and constraints on resources?

We cannot at this time fully address the state and federal laws we are charged with enforcing. The result is a triage process which tackles the most pressing issues, either due to statutory requirements, or because of the consequences we anticipate, of the violation. As a result, there are issues which are sitting on the back burner, awaiting the availability of resources to deal with the problem.

We have looked at staff utilization (resources and workloads), and are now pursuing additional staff resources based on our workload estimates.

#### ***Cleaning Up Polluted Waters***

9. Please describe the status of your board's TMDLs process. Does your board have adequate resources to develop and implement the required TMDLs?

We are proceeding slowly to develop and implement the required TMDLs for our Region. Progress has been slow due to a lack of resources, and the need for extensive public participation, review and comment.

Most recently, our adoption of the TMDL for Methyl Mercury was delayed due to the public (and Board member) comments at our last Board meeting.

10. How will the board monitor and enforce the TMDLs it has or will adopt?

The existing permitting system provides a mechanism for monitoring and enforcing the standards in the TMDLs. This effort requires resources, and to this end, we are in the process of creating enforcement teams in each of our three offices, to make the staff commitment to this activity more efficient in this area of responsibility.

#### ***Enforcement of Water Quality Laws***

11. What enforcement options do you believe provide the most effective tools for violations of board orders?



I believe the most effective tool we have is the personal contact and reputation of our staff. Voluntary compliance is the most cost effective and efficient mode of operation. However, if voluntary compliance is not achieved, then a graduated set of penalties will provide the incentive to avoid violation of board orders.

Fines, as provided in the water code, appear to be effective incentives to most of the permit holders, as witnessed by their efforts to avoid these penalties, which include appeals to their local legislators.

12. What role do you believe fines and penalties should play in enforcing the Porter-Cologne Water Quality Control Act? When are fines and penalties not appropriate?

Fines and penalties are unfortunately necessary to ensure compliance with the Act, but only after all other remedies have been exhausted. I believe that the preferred solution is voluntary compliance. Fines and penalties should be a discretionary tool, and should be held in abeyance so long as the violator is making good faith efforts to comply with the law.

Fines and penalties are appropriate and essential tools when dealing with a repeat violator who is not making good faith efforts to comply with the law. This is the unfortunate reality of our society.

### ***Salinity Management in the Central Valley***

13. How will you determine the severity and scope of this salinity problem? Can you act in a timely manner to address the problem? What approaches will the board use? Please explain.

We will begin by compiling existing information on salt loading and salt accumulation in the Central Valley. This information will be used to identify areas where there is a need for additional information. We will then seek to obtain the needed information. This is a long term program, and it is my opinion that there is time to work to a solution, but we need to recognize that salt related problems are with us now, and will only grow more difficult to resolve with time.

The program is a collaborative effort involving stakeholders, State and Federal Agencies, the SWRCB and the RWQCB. Ideally, we would like to see the program run by an entity representing the stakeholders; a "Joint Powers Authority" has been suggested as one approach to the problem.

14. Is it possible to determine the degree to which dairy operations contribute to salinity buildup? What specific steps relating to dairies can the board take to reduce salt and nitrate discharge to ground and surface waters?
- a. It should be possible to identify the aggregate contribution of dairy operations to the salinity problems without too much more work. Further, the impact of specific dairy operations can be more precisely measured, and used to develop solutions to specific dairies that are operating in the Central Valley. This specific information will be needed for the sizing, and design, of solutions to the salinity problems.
  - b. Solutions, ranging from pre-discharge treatment, to collection and transportation to a safe disposal site (either by pipeline or tanker truck) may be recommended. Based on the results of design studies and the specific nature of the situation, solutions can be developed. However, costs (operating and capital) are a significant factor at this time

*Agricultural Waiver*

15. What information does the board hope to develop from the Irrigated Lands Conditional Waiver Program?
- a. We hope to develop a better picture of the factors which are affecting the water quality of the waters of the State. The monitoring has already led us to specific areas of concern, and has identified the sources of some of the problems.
  - b. Once the problem sources are identified, we will proceed to address the situations, on a case by case basis, working with the coalitions and the landowners.
16. Will the board have information on who is discharging polluted runoff or will it be aggregate information only? To develop an effective regulatory program, how specific should your information on discharge be?
- a. The answer to the first question is highly dependent on the situation on the ground. Some sampling locations will allow us to identify a specific source due to land ownership patterns, in other cases the information will be aggregate, and a more detailed follow-up investigation will be required to identify a specific source. However, aggregate sampling information to identify a problem, and the records of product application maintained by the County agricultural commissioners, could also be used to identify a specific source.

- b. Ideally, continuous monitoring of the waste stream would be the most clear-cut and specific, but very expensive solution. In this case, the cost is high due to the non-point source nature of the discharges. Where a point source discharge is the target, as in a POTF, this is the preferred solution. But due to the more generalized distribution of the discharge in the case at hand, this approach becomes expensive and complex to implement.

Once a source is identified, more specific monitoring may be needed to develop solutions. These decisions will likely be made on a case by case basis.



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May 2, 2008

Nettie Sabelhaus

Appointments Director, Senate Rules Committee  
Room 420, State Capitol  
Sacramento, CA 95814

**Senate Rules Committee**

MAY 09 2008

**Appointments**

Dear Director Sabelhaus:

I am writing in response to the April 16 letter from Senator Perata regarding the confirmation hearing on my recent appointment to the Water Quality Control Board, San Diego Region. In his letter Senator Perata posed 20 questions regarding the Board's activities, challenges and priorities. My responses are listed below in the same order as the questions were presented and are based on my experience with the four board meetings that have been held since my appointment. I have also referred to material published by the State Board and the Regional Board.

1. *What do you hope to accomplish during your tenure as a member of the board? What goals do you have for the board, and how will you accomplish them? How will you measure your success?*

I hope to leave the waters, beaches and ocean of Region 9 in significantly better condition than when I joined the Board. I also hope that the approximately four million people in the Region will better understand their role in water quality and how the Region's water bodies are impacted by their actions and behavior.

My primary goal for Region 9 is to have it recognized by dischargers, environmental groups, municipalities, the USEPA, the public and the State as a highly effective, professional regulatory and enforcement agency. I would like to see it viewed by all as an agency that functions openly, transparently, efficiently and effectively. I would like to see the region recognized as one that sets high standards, and is a tough, but fair, enforcer of the Clean Water Act and the California Water

Code while being a helpful partner in eliminating the causes of violations.

Another goal is to increase the region's ability to monitor and measure the effectiveness of our programs and better understand the relationship between our actions and programs and ambient water conditions and trends.

In summary, I hope we move forward expeditiously in achieving our mission to preserve and enhance the quality of California's water resources for the benefit of present and future generations.

I hope to accomplish the above by personally staying current with water quality issues generally and those of the region particularly. I will carefully listen to all sides of issues before making decisions and always act within the regulatory and enforcement framework while striving to understand what is in the best interests of California and acting in accordance with that understanding.

Success will be measured by decreases in the number of beach postings and closures, reductions in violations and compliance issues, measured improvements in water quality and reductions in the number of water bodies listed as impaired – 303(d) list.

2. *What do you believe are the most serious problems facing your regional board?*

Based on my limited experience to date, I see three serious problem areas. The first involves water quality in the Tijuana River and the significant impact this has on the beaches and ocean in Southern California. The second involves pollution levels in the San Diego Bay, although substantive work is underway to correct this. The third involves the availability of municipal and agency resources to maintain or replace the aging storm and sanitary drain infrastructures and fund other high priority water quality projects. (This is of increasing concern given the current fiscal situation in the State.)

3. *How does your board help the public understand the state of water quality in your region? Where should the public go for information on beach closures, sewage spills, or the overall quality of water in rivers and streams in your region?*



The Board helps the public understand the state of the region's water quality through: its Web-site; e-mail subscription lists on multiple topics; board meetings and workshops; and, presentations by board members, the Executive Officer and staff where and when requested, to name a few sources. Because there is some time lag in reporting spills and other incidents to the Board, the most current public information on beach closures, postings and sewage spills is probably best obtained over the internet, through the radio and from county health agencies. Newspapers also carry reports from organizations such as Heal-The-Bay and Coastkeepers, but such information may not be current.

4. *Do the state board and your regional board staff assist you to better understand some of the complex issues before you if you request help? If not, where do you seek help when you need it? Do you have any suggestions on how the state water board's staff might better assist you?*

To date I have been totally satisfied with the help and insight I have received from the regional board staff and those from the state board with whom I've had contact. As yet, I have not had to seek help outside of the public meetings, but I have asked questions of both regional and state staff during meetings. The responses have all been complete, accurate and to the point. I also find public input during meetings to be of great value in helping me to understand an issue more fully. In the event I might need clarification or help with an agenda item prior to a meeting, I would have no reservations in contacting regional and/or state board staff as long as this would not create a conflict.

At this time I have no suggestions on how the state staff might better assist me; should ideas come to mind, I will not hesitate to raise them.

5. *What training have you received to help you better understand when you might have a conflict of interest regarding an issue on your board's agenda? How do you know when to withdraw yourself from voting on an issue? Have you ever done so since being appointed to the board.*

I had about a three and one-half hour, one-on-one training session with Phillip Wyels, Assistant Chief Counsel, State Water Resources Control Board, Office of the Chief Counsel, prior to my first Regional Board meeting. The bulk of this session concentrated on potential conflicts of interest and how to deal with them. Also, having spent eight years as a city council member, I feel well prepared to recognize any conflicts or perceived conflicts and withdraw from voting, although I recognize that the conflict of interest standards for board members are higher than those for council members. As of now, I have not had to withdraw from any vote, but I am fully prepared to do so should the situation arise.

6. *What is your view of the relationship between the state board and your regional board? Could coordination and accountability be improved? If so, how?*

Given my relatively short tenure on the Regional Board, I am not able to make an informed assessment of the relationship between the State Board and my Regional Board. The limited number of interactions I have had with staff from the State Board have been positive and the staff has been consistently helpful. I do question the criticism that the regional board lacks transparency; my experience to date is that the regional board's actions and processes are quite transparent, as they should be. Although I am not certain how many major policy issues are decided through the appeal process, I would hope that after each appeal is finished, an assessment of "lessons learned" is completed to help determine where there is a need for the state board to establish a consistent statewide policy or where existing policies need to be modified or clarified.

7. *How is your board able to address, within its current funding levels, the state and federal laws that you are charged with enforcing? Are there issues you believe get less attention than they need due to current funding levels and constraints on resources?*

The board is able to address its core enforcement responsibilities largely because of the professional quality and commitment of its staff and the executive leadership they receive.

I believe the topic of public education gets less attention than it should under current funding levels. Although not an enforcement activity, public education is key to helping improve water quality in the State.

8. *Please describe the status of your board's TMDL process. Does your Board have adequate resources to develop and implement the Required TMDLs?*

Our Board's TMDL process has high priority and seems to be progressing satisfactorily. Since my first board meeting in December 2007, the Board has enacted two major TMDL resolutions – (1) *Indicator Bacteria, Project I - Beaches and Creeks in the San Diego Region*; and, (2) *Total Maximum Daily Loads (TMDLs) for Indicator Bacteria, Baby Beach in Dana Point Harbor and Shelter Island Shoreline Park in San Diego Bay*.

To date, I have not seen any indication that the Board lacks sufficient resources or the requisite staff skills to develop and implement TMDLs, although the pace of TMDL implementation appears to be resource constrained. The current priority for TMDLs is bacterial contamination followed by sediment toxicity and benthic degradation.

9. *How will the board monitor and enforce the TMDLs it has or will adopt?*

The Board will use its full legal authority to require monitoring of receiving waters by dischargers and will act promptly on any deviation from allowable TMDL limits. The Board is also reviewing TMDL efforts and experiences statewide to determine how best to enforce TMDLs. Enforcement will be based on the limits specified in the NPDES Permits (storm water, in particular) and WDRs.

In my view we need to be vigilant in all matters required under the Federal Clean Water Act. To do otherwise would deny the importance of water resources to our State's economy and to our residents' quality of life.

10. *What enforcement options do you believe provide the most effective tools for violations of board orders?*



Fines, penalties, and public disclosure of violations provide the most effective tools. The threat of criminal penalties should always be a possibility for serious or repeated violations.

We should also be proactive in efforts to prevent violations and sanitary sewer overflows. Perhaps each region should require a critique that assesses the cause of every violation and overflow and addresses how the violation/spill could have been avoided. These critiques could be circulated among regions, dischargers and permittees to help avoid repetitions of the same mistake.

*11. What role do you believe fines and penalties should play in enforcing the Porter-Cologne Water Quality Control Act? When are fines and penalties not appropriate?*

Fines and penalties, coupled with wide public disclosure, appear to be the most effective tools for enforcing the Porter-Cologne Act. Fines and penalties do not seem appropriate for spills caused by substantiated actions like vandalism (which has been the cause of some spills in the region) or when the responsible party is so financially constrained that the imposition of a fine will likely increase the risk of additional spills/violations.

*12A. Given that the water quality issues of the Tijuana River are complex because the river and its pollution cross an international border, please outline your board's role in addressing water quality issues such as sewage collection and wastewater treatment on the Tijuana River.*

Not only are the water quality issues of the Tijuana River complex, they are extremely serious and a source of frustration to the board because of constraints on actions it can take and because of current litigation.

The Board monitors the discharge from the International Wastewater Treatment Plant (IWTP) under the NPDES "Point Source" Regulation Program. TMDLs covering trash and a variety of pollutants will be determined for both the Tijuana River and the Tijuana Estuary, but under current conditions these will not be

enforceable under State law, even if the waste load reductions are assigned to the Federal Government.

The Board is also the regional liaison to an extensive bacterial source identification study for Border Field State Park and Imperial Beach.

*12B. What help do you receive from the state water board or other entities?*

The State Board along with the City of Imperial Beach has provided funding for the bacterial study noted above.

The Board has also received considerable help from the legal and technical staffs of the State Water Board on the law suit, *Bajagua, LLC v. California State Water Resources Control Board, California Water Quality Control Board, San Diego Region*, that is now before the San Diego Superior Court. Deputy attorneys from the California Attorney General's Office have also been especially helpful on this case.

USEPA is also working with the Regional and State Boards to find workable solutions for improving the water quality in the Tijuana River.

*13. How do you believe this issue should be addressed?*

A partnership now exists between Mexican and U.S. stakeholders and agencies that has crafted a watershed management plan (Bi-national Vision) for the Tijuana River with funding from Proposition 13. In my opinion, such a partnership is vital if any real progress is to be made on this serious problem.

In addition to this partnership, I believe that increased collaboration between our state and federal elected officials and agencies would help in ensuring the priority attention this issue deserves. It is urgent that we collectively find and implement a cost-effective solution that can be relied upon if we are to protect California's water resources and the health of its residents. We should also seek means to give the state regional boards real enforcement power including the authority to levy fines and

penalties.

The urgency of this issue was addressed recently by Senator Diane Feinstein in an editorial published in the May 2 edition of The San Diego Union-Tribune. The Senator referred to a recent report by the GAO that found expansion of the San Ysidro International Wastewater Treatment Plant to be less costly and less risky than building the Bajagua plant in Tijuana. I would hope that the GAO report will provide the basis for moving ahead on this issue now and provide a plan for complying with the Federal Court's orders.

14. *Please outline the progress or lack of progress the San Diego board has made in addressing the sewage overflow problems. Do you have the tools you need? When do you expect to see enough progress so that such sewage overflows are no longer routine?*

During the period FY 2000 to FY 2006 the number of sanitary sewer overflows in the San Diego Region decreased from 600 to just over 200 – a reduction of over 60%. The Board is committed to continuing this progress and monitors the number of spills and their causes routinely. Based on my limited board experience to-date, I feel we have all the tools we need. In my view, we are approaching the point where overflows and spills will not be considered routine, but exceptions. Some agencies in the region have adopted a “zero spill tolerance” and data suggests that responsible parties are acting quickly to fix any overflows. While an aging infrastructure is the cause of many spills, I am aware of increasing attention to improved testing, monitoring and preventive actions by many of the sanitary sewer system operators.

15. *Since 2004 your board has been the lead agency for the cleanup effort (Point Loma). What is the status of the cleanup?*

As of April 15, 2008, a total of 149,830 gallons of fuel (out of 1.5 million) have been recovered from the ground-water aquifer at Point Loma as part of an effort to control plume migration. A full scale remediation system has been designed and constructed. It is scheduled to become fully operational in July 2008. The new



system is designed specifically for fuel extraction and is expected to do so at ten times the rate of the current, interim system. The new system is expected to be in use for the next 10 years.

By the end of 2007, the navy had completed its site assessment effort that involved over 50 ground-water monitoring wells, 16 exploratory borings and 19 vapor probes. Using data from these test sites and geophysical mapping, the Navy developed a model of the plume and submitted a Corrective Action Plan with which the board has concurred.

16. *According to the February 2008 executive officers report, board staff met with representatives from Camp Pendleton and the county of San Diego Local Enforcement Agency on January 29 to discuss the Base's Corrective Action Plan for its Las Pulgas Landfill. Do you feel the plan contains appropriate actions to clean up the leaked fuel?*

Actually, the Corrective Action Plan was not designed to clean up leaked fuel, but rather to correct problems with "leachate" that has leaked through the waste containment system in the expansion area of the landfill. Given the need to fix the waste containment system, the Corrective Action Plan seems very appropriate; however, it would not be appropriate for cleaning up leaked fuel

17. *Has the meeting requested by the city occurred? If so, what was the outcome? If not, what results would you like the meeting to produce?*

Yes, the meeting requested by the City of San Diego to discuss cleanup progress at the Mission Valley Terminal was held on March 19, 2008. At the meeting, staff from the City of San Diego presented their recommendations for tracking the cleanup and meeting the deadlines contained in the Cleanup and Abatement Order. The City committed to formally submit its recommendations to the regional board for review and approval. After the recommendations are acted on, the regional board staff will work with city staff and the operator (Kinder Morgan) to develop quantifiable measures for tracking the cleanup progress.

18. *How is the board working to monitor and achieve cleanup of the*

*MVT and Qualcomm Stadium sites?*

The MVT terminal operator is required to report quarterly on groundwater and soil pollution. Groundwater monitoring is done from samples taken from monitoring wells located both on the terminal property and outside it.

Progress on ground water remediation has been verified continuously from quarterly reports, plume maps and other data produced over the past several years.

Soil remediation monitoring is accomplished through soil vapor samples taken every two weeks at monitoring wells. The monitoring results are reported quarterly to the Board. (Monitoring and reporting requirements are contained in the Cleanup and Abatement order No. 92-01)

*19. What is your view of the role of the regional water boards regarding this issue (pharmaceuticals in the water supply)?*

I believe the regional boards have a distinct role in this issue because I believe the pharmaceuticals and other emerging chemicals pose a serious risk to human health. The state and regional boards should begin planning now; it is only a matter of time before the USEPA sets more stringent standards for these pollutants.

*20. Should the state board – through the regional boards – be working with the Department of Public Health to require testing and set safety limits for pharmaceuticals in drinking water?*

Yes! This is a serious and growing problem that needs collaborative action among appropriate state and federal agencies and perhaps the water supply and treatment industries; the Department of Public Health would appear to be the appropriate agency to set the safety limits. The Regional Board did raise the issue of developing a regulatory approach for “emerging chemicals” including pharmaceuticals, at the October 2 State Water Board meeting in Los Angeles.

The problem has at least two components – disposal of unused pharmaceuticals and the treatment of potable, recycled and waste water containing pharmaceutical residues discharged by patients.

The disposal component should be addressed by SB 966 that was passed by the Senate and Assembly and sent to the Governor in September 2007. The bill requires retailers of pharmaceuticals to provide disposal facilities for unused drugs. Implementation of the bill should be accompanied by an extensive public-education program to build consumer awareness and inform and educate them about the negative impacts of improper drug disposal (flushing down the toilet or putting them in the trash) while encouraging consumers to use the disposal facilities. Prescription labels should also carry disposal instructions in large type.

The residue component needs prompt attention, as do the numerous questions surrounding this issue. For example; are effective testing protocols available now that can be implemented at reasonable costs? Where would treatment facilities best be located, how would they be funded and how should they be regulated? How soon can safety limits be established? Are there special treatment needs for recycled water given the expected growth in its use as water conservation becomes increasingly vital? What technologies are available now or are expected to be available to do the necessary treatment?

Nettie, please feel free to contact me should you need clarification on any of my responses or if you require any additional information. You can reach me by phone at 949-922-0744 (cell phone) or by e-mail at – [wrayfield@mac.com](mailto:wrayfield@mac.com). Please note that I have also included an updated Form 700 as requested by Senator Perata.

Sincerely,



Wayne Rayfield

Enc. - Form 700, May 5, 2008 (Original)





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APPOINTMENTS DIRECTOR

SENATE RULES COMMITTEE

DON PERATA  
CHAIRMAN

April 16, 2008

Kris J. Weber

Dear Mr. Weber:

The Senate Rules Committee will conduct a confirmation hearing on your appointment to the Water Quality Control Board, San Diego Region, on Wednesday, May 28, 2008. You will likely not be required to appear in person, but we request that you respond in writing to the following questions. Please provide your responses by May 9, 2008.

We would also like to receive an updated Form 700, Statement of Economic Interest, by May 9<sup>th</sup>.

Because of situations that occurred with board appointees in the past, we ask that you provide these responses in your own words, not those of staff.

**Statement of Goals**

1. *What do you hope to accomplish during your tenure as a member of the board? What goals do you have for the board, and how will you accomplish them? How will you measure your success?*
2. *What do you believe are the most serious problems facing your regional board?*
3. *How does your board help the public understand the state of water quality in your region? Where should the public go for information on water quality issues such as beach closures, sewage spills, or the overall quality of water in rivers and streams in your region?*

**Senate Rules Committee**

MAY 16 2008

**Appointments**

## State and Regional Board Roles

The issues addressed by regional water boards are often scientifically complex. Preparation for hearings can be time consuming for board members, particularly considering these are part-time positions.

4. *Do the state board and your regional board staff assist you to better understand some of the complex issues before you if you request help? If not, where do you seek help when you need it? Do you have any suggestions on how the state water board's staff might better assist you?*
5. *What training have you received to help you better understand when you might have a conflict of interest regarding an issue on your board's agenda? How do you know when to withdraw yourself from voting on an issue? Have you ever done so since being appointed to this board?*

The Porter-Cologne Water Quality Control Act generally establishes the relationship between the state and regional boards. Regional boards usually set water quality goals in their basin plans, develop Total Maximum Daily Loads (TMDLs), and enforce permit and discharge requirements as well as state and federal water quality laws. However, regional board budgets are not reviewed individually by the Governor or the Legislature, and most regional board staffing decisions are made at the regional level, not at the state level.

The state and regional board structure has been criticized by both industry and environmental groups for being cumbersome and lacking accountability, efficiency, and transparency. Both sides note that major policy issues often are decided through the state board appeals process instead of through a consistent statewide policy that is proactively established by the state board and implemented by the regional boards.

6. *What is your view of the relationship between the state board and your regional board? Could coordination and accountability be improved? If so, how?*
7. *How is your board able to address, within its current funding levels, the state and federal laws you are charged with enforcing? Are there issues you believe get less attention than they need due to current funding levels and constraints on resources?*



## **Cleaning Up Polluted Waters**

Governor Schwarzenegger has stated in his Environmental Action Plan that he will fully implement existing water quality programs, such as municipal storm water permit programs and TMDLs programs, which are required under the Federal Clean Water Act to improve water quality by limiting the amount of pollutants allowed into water bodies.

Currently, regional water boards lag far behind their adopted schedules for cleaning polluted or impaired waters, and existing monitoring programs make it difficult to identify other waters that may be polluted.

8. *Please describe the status of your board's TMDLs process. Does your board have adequate resources to develop and implement the required TMDLs?*
9. *How will the board monitor and enforce the TMDLs it has or will adopt?*

## **Enforcement of Water Quality Laws**

Three years ago the Office of the Secretary of Cal-EPA reported to the Legislature on environmental enforcement and suggested that the state and regional water boards were among the worst agencies in enforcing the law. The report stated that the boards were very slow to enforce clean water laws, almost never sought criminal penalties for serious violations, and generally did not aggressively pursue violators.

10. *What enforcement options do you believe provide the most effective tools for violations of board orders?*
11. *What role do you believe fines and penalties should play in enforcing the Porter-Cologne Water Quality Control Act? When are fines and penalties not appropriate?*

## **Tijuana River Pollution**

The Tijuana River flows north from Tijuana, Mexico, into the United States just west of Highway 5 at the U.S.-Mexico border. In the U.S. the river flows west and empties into the Pacific Ocean, about 2.5 miles north of the border. Even though there is an International Wastewater Treatment Plant in Mexico, it cannot handle the volume of sewage that Tijuana generates, and untreated sewage and debris are discharged into the river. Ocean currents take the pollution north and contaminate south county beaches.

Though the federal government is ultimately responsible for negotiating a fix with Mexico, it is still a California issue insofar as the polluted river flows into the state. The

regional board has issued a National Pollutant Discharge Elimination Permit to the U.S. International Boundary and Water Commission (IBWC), which operates a wastewater treatment plant in Mexico. The commission is out of compliance with the current permit. The capacity of the treatment plant is 25 million gallons per day, but growth in the Tijuana area has overtaken the plant's capacity. In addition, the wastewater treatment plant does not handle the large amount of sedimentation and trash that is discharged into the river on the Mexican side and flow into the state.

In December 2007 Congress allocated up to \$66 million to address this issue. The Government Accountability Office is comparing the two major proposed projects—enhancing the IBWC's existing sewage facility in San Ysidro or building a new plant in Tijuana with the help of Bajagua, a San Marcos-based company—and is expected to report its findings by the end of April.

12. *Given that the water quality issues of the Tijuana River are complex because the river and its pollution cross an international border, please outline your board's role in addressing water quality issues, such as sewage collection and wastewater treatment on the Tijuana River. What help do you receive from the state water board or other entities?*
13. *How do you believe this issue should be addressed?*

### **Sewage Overflows**

The San Diego region has a long history of sewage overflows. In January 2008 there were 20 sewage overflows, including seven spills of at least 1,000 gallons. In February 2008 there were 17 sewage overflows, including five spills of at least 1,000 gallons. Four of these spills led to beach closures in the San Diego region in the first two months of the year.

14. *Please outline the progress or lack of progress the San Diego board has made in addressing the sewage overflow problems. Do you have the tools you need? When do you expect to see enough progress so that such sewage overflows are no longer routine?*

### **Fuel Leaks at a Federal Military Installation**

The Point Loma Fuel Facility is one of five fuel facilities located on the Point Loma Peninsula in San Diego. This facility serves the military fuel needs of the west coast of the United States. There are 33 above-ground tanks and 24 underground tanks that store approximately 50.4 million gallons of fuel. The tanks were constructed in the 1930s and 1940s. Historically, approximately 1.5 million gallons have been released,

but only 139,885 gallons have been recovered. Reports state that the underground fuel leak has moved beyond the boundary of the fuel facility and into the nearby La Playa neighborhood.

15. *Since 2004 your board has been the lead agency for the cleanup effort. What is the status of the cleanup?*
16. *According to the February 2008 executive officer's report, board staff met with representatives from Camp Pendleton and the County of San Diego Local Enforcement Agency on January 29 to discuss the Base's Corrective Action Plan for its Las Pulgas Landfill. Do you feel the plan contains appropriate actions to clean up the leaked fuel?*

### **Mission Valley**

The Mission Valley Terminal (MVT) is located in the City of San Diego near Qualcomm Stadium. As a result of historical petroleum storage and distribution operations, soils and groundwater in the vicinity of MVT have been contaminated by releases of petroleum. The impact has extended beyond MVT property, including beneath Qualcomm Stadium and surrounding parking lots. The city, which owns Qualcomm Stadium, is interested in developing the groundwater resources located downgradient of the MVT plume for a municipal drinking water supply.

In 1992 the San Diego Regional Water Quality Control Board issued a cleanup order for the Qualcomm Stadium property. In 1998 Kinder Morgan Energy Partners, a Houston oil company, bought the tank farm and took over the cleanup. In 2005 the board issued an addendum setting a target date of 2013 for completion. In August 2007 the City of San Diego filed a lawsuit against Kinder Morgan to speed up removal of gasoline contamination beneath Qualcomm Stadium. At the March meeting of the San Diego Regional Water Quality Control Board, the executive officer reported that the city has requested a meeting with board staff to discuss the progress of the cleanup.

17. *Has the meeting requested by the city occurred? If so, what was the outcome? If not, what results would you like the meeting to produce?*
18. *How is the board working to monitor and achieve cleanup of the MVT and Qualcomm Stadium sites?*



## Drinking Water Contamination

In early March the Associated Press (AP) reported that a vast array of pharmaceuticals and over-the-counter medicines were detected in the drinking water supplies of 24 major metropolitan areas—from Southern California to New Jersey. Additionally, AP's investigation indicated that watersheds, the natural sources of most of the nation's water supply, also are contaminated. These pharmaceuticals are manufactured to be active at small doses. Although the concentrations of these pharmaceuticals are miniscule, concerns have been raised among scientists because of the long-term consequences to human health.

Under current law, required testing and standard limits for pharmaceutical and over-the-counter drugs in drinking water are limited. Beginning in January 2008, several water systems began monitoring under the U.S. Environmental Protection Agency (USEPA) Unregulated Contaminant Monitoring Regulation for contaminants selected from the Contaminant Candidate Lists. These are potential contaminants that USEPA may regulate in the future. Federal and state laws give authority to USEPA, the California Department of Public Health, or the regional water boards to regulate contaminants, which could include pharmaceuticals.

19. *What is your view of the role of regional water boards regarding this issue?*
20. *Should the state board—through the regional boards—be working with the Department of Public Health to require testing and set safety limits for pharmaceuticals in drinking water?*

Please send your written answers to these questions to Nettie Sabelhaus, Senate Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Thank you for your help.

Sincerely,



DON PERATA

DP:ER

cc: Water Quality Control Board, San Diego Region

*Kris Weber*

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May 15, 2008

**Senate Rules Committee**

The Honorable Don Perata, Chairman  
SENATE RULES COMMITTEE  
State Capitol, Room 420  
Sacramento, CA 95814-4900

MAY 16 7:00 PM

**Appointments**

Dear Senator Perata:

Thank you for the opportunity to share some of my thoughts and reactions to the questions posed by your committee. As one of the junior members of the Board, I welcome this chance to offer my thoughts on some of the more pressing issues and challenges faced by our Regional Board.

**Statement of Goals:**

1. As a member of the Board filling one of the water quality appointment categories, I will endeavor to bring my background and expertise to bear on the current and upcoming issues that will be faced by our Board. One of the goals I have for our board is to establish more consistency among Municipal Separate Storm Sewer System (MS4) permits in Southern California. While there will always be region specific issues that will not allow for complete consistency, we should still strive to establish consistency wherever possible. I am pleased to note that the board is supportive of this issue as of February 2008 and to this end we have had our executive officer and senior staff meet with their counterparts in Regions 4, 7 and 8 to discuss these issues.
2. Some of the most serious issues we face include staffing and training issues related to the upcoming adoption of the new construction general permit by the state board. In addition, the adoption of the MS4 permit for South Orange County (the Northern Core Regulatory Unit) is of paramount importance and is related to the consistency issues mentioned above. The implementation of low impact development (LID) strategies will be critical to the new MS4 permits. The challenge will be to formulate a workable approach to incorporate at least some of the LID strategies into existing development.
3. The most effective means of educating the public is through cooperative public outreach campaigns with the local agencies. Our board's website is also a wealth of information and includes links to many other informative groups and agencies.
4. Help on technical or scientific issues has been readily available from the regional board staff who have made themselves easily available for needed requests or clarification. I direct my questions or concerns to the executive officer who then answers my questions or directs the appropriate staff to respond back to me. In my short time on the board, I have been very impressed with the staff's depth of knowledge and professionalism.

5. Apart from the state's online tutorial programs, I have received detailed training from the state board's Assistant Chief Counsel, Phil Wyels, as well as from board counsel, Catherine George. Whenever an item on the agenda comes up where I am unclear as to a possible conflict, I contact Catherine George for guidance. I have recused myself once from voting on an ACL fine because my firm had performed services on the project site, but not for the entity named in the ACL. Although this was probably not required technically, I did not want even a hint something improper.
  6. As a new board member, I have not had many opportunities to interact with people from the state board. I have been impressed that on numerous occasions, our state board liaison, Fran Spivy-Weber, has attended our regional board meetings. The co-sponsored training by the state board at the Water Education Foundation workshop in April was very informative and appreciated. I trust that similar programs will be offered in the future.
- 7/8/9. My somewhat limited observances of the board's enforcement actions tend to indicate dedication on the part of the staff to full enforcement of the state and federal laws in effect.

#### Cleaning Up Polluted Waters:

Funding levels and staffing issues will always effect the board's ability to address all of the water quality challenges we face. One area where this is apparent to me is the adoption of TMDL's. The adoption process could be expedited with more staff resources as some of these impaired water bodies have very complex issues facing them. Currently, we receive periodic updates on our board's TMDL implementation and currently have adopted seven of our 22 identified needed TMDL's. As you are aware, state law mandates that all TMDL's in California include implementation plans which outline how compliance will be achieved. The implementation plan then outlines which of the board's enforcement options will be used to achieve the desired results.

#### Enforcement of Water Quality Laws

- 10/11. In 1998 the board created a stand alone enforcement unit dedicated to improving discharge compliance through formal enforcement actions which include cleanup and abatement orders, cease and desist orders, and assessment of administrative civil liabilities.

This has resulted in increased enforcement activities which in turn has resulted in improved discharger compliance with waste discharge requirements. Fines and penalties are not generally appropriate for poor rural community privately owned treatment works.

#### Tijuana River Pollution

12. Currently the board is working as a regional liaison to an extensive bacteria source identification study in the Tijuana River Basin. This project is supported by the proposition 50 grant program under a grant agreement between the state board and the City of Imperial Beach. This study will be the first step towards establishing a TMDL for this water body. USEPA is also assisting the TMDL development through a small contract to evaluate the current impairment condition of impaired water bodies.



13. In order to solve this serious and complex problem the San Ysidro treatment plant needs to be improved to provide for secondary treatment for its 25 MGD capacity. This is the approach favored by the GAO report and endorsed by Senator Feinstein. It needs to happen now.

#### **Sewage Overflows**

14. The board regularly receives sewage overflow reports from the executive offices. The aggressive regulation and enforcement actions of the board has significantly reduced the number of spills by public agencies. This notable downward trend has been evident since the year 2000. While aging infrastructure in local jurisdictions will be an ongoing concern, I believe that with enhanced public awareness these types of spills will not be looked at as routine within the next five years.

#### **Fuel Leaks at a Federal Military Installation**

15. To control fuel migration towards San Diego Bay, interim measure were established in the year 2001. These efforts focused on the extraction of fuel from the ground water aquifer. The contaminated plume is estimated to represent 1.5 M gallons of fuel and to-date, only approximately 150,000 gallons have been recovered. A full scale remediation system is expected to come on line in July of 2008 and is expected to be operational for ten years. It should also be noted that in 2004 the Navy initiated a comprehensive site assessment in order to more fully understand the site's geology and hydrogeology.
16. The corrective action plan formulated by the U.S. Marine Corps Base Camp Pendleton represents a correct and effective solution to the problem which was a defective composite liner system and not leaked fuel.

#### **Mission Valley**

- 17/18. The meeting was held on March 19, 2008. MVT is required to report the status of the soil and groundwater pollution as well as the progress of the remedial systems to the board on a quarterly basis. Evaluation of the remedial progress of the groundwater cleanup will be ongoing.

#### **Drinking Water Contamination**

- 19/20. Pharmaceuticals are one class of compounds identified in a general class of pollutants known as "emerging chemicals." Currently the board requires recycled water purveyors to monitor for pharmaceuticals in groundwater aquifers. The board also works with the California Department of Health in developing water quality criteria using recycled water reuse standards and water quality criteria. Sadly, established regulatory criteria and standards are lacking for many classes of emerging chemicals. However, the board, using its investigation authority, could work with CDPH in acquiring useful data for establishing water quality objectives and in providing information critical to controlling sources of emerging chemicals.

Sincerely,



Kris Weber, CPESC, CPSWQ, CESSWI



APPENDIX II

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LORENS & ASSOCIATES, APLC, Counselors at Law

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McClintock Plaza, 1202 Kettner Blvd., Suite 4100 • San Diego, CA 92101

Telephone (619) 239-1233

Facsimile (619) 239-1178

L. Tracee Lorens

Wayne Alan Hughes, Of Counsel

May 27, 2008

\*VIA OVERNIGHT MAIL AND E-MAIL\*

The Honorable Don Perata  
President Pro Tempore  
California State Senate  
State Capitol, Room 205  
Sacramento, CA 95814

Re: Senate Confirmation of Robert Jones as Under-Secretary for Enforcement of Labor and  
Work Force Development Agency

Dear Senator Perata and Committee Members:

When I learned that Robert Jones was being considered as the Under-Secretary of Labor Enforcement I drafted the letter indicating that I do not believe he is qualified for the position. That letter was dated May 12, 2008 and sent to your attention. On May 15, 2008, I traveled to Sacramento to put a face on that letter and to show the serious nature of my concerns. Frankly, after sitting through Mr. Jones' testimony in response to those opposing his confirmation, I am even more convinced that he should not be confirmed.

First, at least in the private sector, I can tell you that if I had taken a position such as Mr. Jones did when he was appointed Acting State Labor Commissioner and Chief Counsel of the DLSE, and the performance in the office dropped by 70% under my management, no one would be considering me for a promotion. More likely, I would be "pounding the pavement" looking for a new job.

However, Mr. Jones' testimony on May 21, 2008, clearly highlighted the serious reasons why he is inappropriate for the position for which he is seeking confirmation. He is either totally unaware of what was going on at the DLSE under his management or, more likely, is so intent on assisting defendants and employer associations in the State of California that he was willing to mislead this committee while testifying before you. Whichever it is (and it could be a combination of both) there is no doubt that his conduct while Acting Labor Commissioner and Chief Counsel for

the DLSE has created a "chilling affect" within that office and made it extremely difficult for the employees at the DLSE to perform their job functions without fear of reprimand, suspension, termination, or being, without cause, accused of criminal conduct.

For purposes of clarity, I would like to respond the Mr. Jones' allegations during his testimony as they appear chronologically in the draft hearing transcript which was forwarded to me on Friday, May 23, 2008. The draft copy of the transcript in my possession begins at page 12 since that is the section covering Mr. Jones's testimony. For your convenience it is attached to this letter as Exhibit 1.

I do not believe there is a dispute, and Mr. Jones conceded, that he began as the Labor Commissioner's Chief Counsel on August 1, 2005. (Transcript at p. 13, lines 26-27). The DLSE lawsuit against Brinker Corporation was settled in August 2002. The DLSE lawsuit which resulted in the 2002 settlement covered a time period from October 1, 1999 to December 31, 2001. (Transcript at p. 17 lines 2-5). While Mr. Jones testified that "this was the same issue, covering the same period of time, that Ms. Lorens was now suing Brinker on again." (Transcript at p. 17, lines 8-9) his statements are incorrect and parrot the Brinker defense attorney's talking points.

In fact, my lawsuit was filed August 16, 2004 and covered the time period of October 1, 2001 to the date of judgment. Since there is no judgment yet, the claims in my lawsuit are currently ongoing. Thus, the overlap only occurs between October and December 2001, i.e., 3 months out of what is now a seven (7) year statutory period.

Although Mr. Jones's inaccurate testimony to this honorable committee that my private lawsuit against Brinker is about "the same issue, covering the same period of time" may seem minor, it actually highlights his cozy relationship with the defense bar in the State of California and the Employer Associations aligned in support of emaciating workers rights, which has become a major issue in both our legislature and our courts over the past several years. Nonetheless, I found it even more horrifying to then hear Mr. Jones testify that I had been involved in some type of criminal conspiracy to obtain confidential documents relating to the DLSE's lawsuit against Brinker Restaurant Corporation.

Mr. Jones inferred in his testimony that I had received confidential government documents from Miles Locker in 2005, which had been denied to the Brinker attorneys, and which I was refusing to share with the Brinker attorneys. (Transcript at p. 16, lines 2-7). **I have never received nor attempted to receive any confidential documents, from any source, regarding any case I have ever prosecuted, including from the DLSE or Mr. Locker.** Mr. Jones's accusations (which constitutes slander per say as he has accused me of criminal activity) are not only without merit but



Mr. Jones himself knew they were false at the time that he made those statements to this committee.

The documents he refers to (during this portion of his testimony) resulted from a California Public Records Act (government code section 6250, et. seq.) request which was sent to the DLSE by me on January 4, 2005.<sup>1</sup> In other words, they were requested by a legitimate and standard means of communication with the DLSE. On April 1, 2005, I received a letter from the DLSE outlining those documents which were being forwarded to my attention and explaining what was and what was not discoverable. In other words, the DLSE attorney assigned to the case (who happened to be Miles Locker) specifically outlined which records were being provided and which records were not being provided based on DLSE privileges. A copy of my CPRA request is attached to this letter as Exhibit 2 and a copy of the DLSE response is attached to this letter as Exhibit 3. It is true that I did not share these documents with my opposing counsel in the Brinker case but this was based upon a court order whereby the Trial Court found these documents were obtained as a result of my own investigation and work product and that the Brinker attorneys not only apparently had the documents already in their possession but, were required under California Law to perform their own investigation and to send their own Public Record Act request to the DLSE. In our legal system, we are not required to perform our opponent's investigation and research.

Mr. Jones went on to testify that "we could not identify what was given to Ms. Lorens, as no record had been made regarding the request except for a log entry that showed the response to the items in question was handled by Miles Locker. (P. 16, lines 10-14). This statement certainly peaked the attention of those in the hearing room, but was totally false. Mr. Jones's own files at the DLSE contain what is attached to this letter as Exhibit 3 specifically outlining what was produced to me and making it clear that any documents the DLSE believed to be privileged or confidential were withheld or redacted."<sup>2</sup>

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1

You will note that the letter was not directed to Mr. Locker, as I did not even know Mr. Locker at that time. It was a standard form CPRA request letter, similar to those sent in all my Wage and Hour cases.

2

I have since found out that Mr. Jones cannot be sued for intentional and malicious statements made during his testimony before the Senate Rules Committee. Several immunities protect him from prosecution. This may account for his cavalier attitude during his response as it relates to honesty and integrity.

Mr. Jones goes on to state that this was not the only improper conduct in this case. Of course, when he so testified he knew that no improper conduct had occurred whatsoever. He then discussed a letter received from Brinker's assistant general counsel informing him that "...for almost one year, Brinker had been repeatedly attempting to secure a letter from Mr. Locker that the DLSE was legally required to provide to Brinker..." He indicated that this letter was received on March 30, 2006. (Transcript at p. 16, lines 23-28). However, while Mr. Jones continued to cast aspersions at me and Mr. Locker, his own testimony at this point contradicted his prior testimony.

There is no question based on the record that Mr. Jones took over Mr. Lockers position in August 2005. Thus, even based upon Mr. Jones's own testimony this letter being requested from Brinkers Assistant General Counsel was not requested until approximately summer 2005. In other words, it was requested at just about the same time that Mr. Jones took over at the DLSE. Instead of blaming Mr. Locker for not sending this innocuous letter, he should have taken responsibility for any such omission himself. The time period he describes that this letter was being requested from Brinker is while he was at the helm of the DLSE and after Mr. Locker had been suspended and/or terminated.

Then Mr. Jones went on to testify about further alleged inappropriate conduct by me in mid-May 2006. (Transcript at p. 17, line 19-p. 18, line 4). It relates to a declaration which I sent for Mr. Jones to review stemming from two boxes of documents received from the DLSE as a result of a subpoena for documents I served on the DLSE in early 2006. First, I do not believe that the declaration I prepared for Mr. Jones's review contained privileged work product information as he testified. However, and more importantly, the declaration was not sent to Mr. Kolesnikow or filed in any action. It was drafted based upon the documents sent to me by the DLSE **and then it was sent to Mr. Jones for his approval.** Frankly, I do not know many attorneys who act with such caution. I cannot picture a manner in which I could have utilized more caution than the one employed. For instance, I did not send the declaration to Mr. Kolesnikow for his review, comments, or signature; I sent it directly to Mr. Jones. Mr. Kolesnikow never even received a copy of the draft declaration. For Mr. Jones to turn this into something surreptitious or nefarious is further proof that he fabricates conspiracies whenever it is to the benefit of his friends in the defense bar in California or the Employer Associations to whom he is beholden.

At page 18 of the transcript Mr. Jones makes fun of the fact that I found his letter to me regarding this declaration as somewhat "scary." I think his testimony before this committee (inferring that I had committed criminal conduct) is evidence that my reaction to his letter was justified. The amazing thing is that the documents Mr. Jones accused me of having in my possession inappropriately and having obtained from Mr. Kolesnikow **actually came directly from him** in response to a valid California subpoena. (See Exhibit 4 to this letter).



To add insult to injury, Mr. Jones then testified about some documents which had been inadvertently forwarded when the DLSE forwarded two boxes of documents in response to my subpoena of early 2006. He continues to represent to the Senate Rules Committee that only the Plaintiffs were benefitting from his conduct. However, when the subpoenaed documents were produced as a result of my subpoena, Mr. Jones made copies of the same documents for the Brinker attorneys. In fact, I was told by the copy service that Mr. Jones had his staff copy a much larger group of documents for the Brinker attorneys (his personal friend's Kirby, Karen, and Richard Simmons) than the documents he was allowing the attorney service to copy and forward to me. I do not believe the Brinker defense attorneys ever sent a subpoena, but Mr. Jones made copies for them anyway.

He testified that the inadvertent "improper disclosure" that occurred during this second production disclosed Brinker's "clients" confidential documents, "that included the employers and employees names and social security numbers..." (transcript at p. 19, lines 1-4).

First, Brinker's employees are not their "clients" but are my clients. More importantly, the San Diego Superior Court had already ordered Brinker to produce the names, addresses, and social security numbers for the same individuals to me in the lawsuit I currently have pending against Brinker.

Mr. Jones was well aware of the fact that no improper disclosure had occurred when he testified otherwise before this honorable committee. He admitted this beginning at the bottom of page 27 of the hearing transcript. He stated "but with respect to this- - the Lorens case, I did have one of the other attorneys take a look at what was really going on there. And I have to tell you, I don't think we have sufficient evidence for something of that nature...but I'd hate to think that there wasn't something going on...". I believe this is where the willingness of Mr. Jones to intentionally mis-lead this Committee and engage in character assassination is most clear from the record. In one sentence he admits that he had an attorney in his office investigate whether or not an improper disclosure of documents had occurred; admits that there was not evidence of something of that nature, and within two sentences later, states "but I'd hate to think that there wasn't something going on...."

The investigation that he discusses having one of the other attorneys in the DLSE perform for him was performed by one of the attorneys he trusts most in his office, a gentleman by the name of David Balter. David Balter and I spoke personally by telephone on June 16, 2006. Mr. Balter indicated to me that Mr. Jones knew nothing had occurred and that although some documents had been inadvertently produced by the DLSE when they produced two boxes of information, they



recognized that I immediately returned those documents and the only confidential information in them was information already in my possession (from Brinker itself) pursuant to a State Superior Court Order.

I wrote Mr. Balter a letter confirming our telephone conversation, a true and correct copy of which, is attached to this letter as **Exhibit 5**. Attorney Balter told me that he had prepared a memorandum for Mr. Jones and the DLSE files finding that no inappropriate conduct had occurred but that he could not provide me with a copy of that memorandum because Mr. Jones had deemed it attorney/client privileged. Nonetheless, there is absolutely no explanation for or excuse for Mr. Jones appearing in front of this committee and testifying to what would have constituted criminal conduct had his testimony been accurate. Instead, his testimony was nothing more than another intimidation tactic by Mr. Jones and one which exemplifies the multitude of reasons his confirmation should be denied.

Finally, I must agree with Chairman Perata's statement near the end of Mr. Jones's testimony where he said "there's a lot of hearsay, he said-she said." (Transcript p. 31, line 14). When weighing our respective credibility, I would ask that you take several things into consideration. First of all, if I really had confidential documents surreptitiously obtained from the DLSE, why would I wish to air that situation in such a public setting? There is no advantage I would gain in the pending Brinker action and in fact, it would be likely, that if such were true I could be removed as counsel for the employees in the Brinker action.

While you do not "know me from Adam", I can tell you that while I have received many awards and commendations during my life, one of the ones of which I am the proudest, was when I received a Senate Resolution on February 9, 2004 from Joe Dunn of the 34<sup>th</sup> Senatorial District. It hangs "front and center" in my office reception area and states in pertinent part that it was presented based upon my outstanding record of personal and civic leadership deserving of special honors and the highest commendations. It commended me on my exemplarily record of achievements in business and community service. Of the awards I have received during my life that Senate Resolution is tied with my recent receipt of the David S. Casey, Jr. Consumer Advocate Award. It was presented to me in January 2008 in recognition of exceptional dedication to the cause of justice for all consumers and the preservation of the trial lawyer profession. Some of the prior recipients are former Presidential Candidate John Edwards, immediate past president of CAOC Raymond D. Boucher, and Michael Shames of UCAN, etc. etc.

I have been practicing law in San Diego County since 1990 and have been an active member in good standing since that time. I have never been disciplined by the California State Bar or any other organization. I have a reputation for integrity, honesty, and professionalism. You can call my

friends or you can call my adversaries and they will tell you that you can "take my word to the bank."

Thank you for giving me the opportunity to clarify the record and to defend myself against what I believe were unwarranted, meritless, and self-motivated attacks on my character during the testimony of Bob Jones before this Committee last week. If you have any questions or need any additional information, please feel free to contact me at any time.

Yours truly,  
LORENS & ASSOCIATES, APLC

A handwritten signature in cursive script, appearing to read "L. Tracee Lorens".

L. Tracee Lorens  
LTL:dlg





# EXHIBIT 1

Fax Transmittal Sheet

APPOINTMENT UNIT  
SENATE RULES COMMITTEE

STATE CAPITOL, ROOM 420  
SACRAMENTO, CA 95814

TELEPHONE: (916) 651-4151

FAX: (916) 445-0596

DATE:

5/23

TO:

Tracy Lorenz

FAX:

FROM:

Nettie Salselhaus

PAGES TO FOLLOW:

21

DRAFT

1 SECRETARY WEBB: Battin Aye. Perata.

2 CHAIRMAN PERATA: Aye.

3 SECRETARY WEBB: Perata Aye. Five to zero.

4 CHAIRMAN PERATA: Five-zero, congratulations.

5 MR. DUNCAN: Thank you so much. I appreciate it.

6 CHAIRMAN PERATA: And your family's welcome to  
7 come back at any time.

8 [Laughter.]

9 MR. DUNCAN: I appreciate it, thank you.

10 SENATOR PADILLA: Can I add on to the previous  
11 vote?

12 CHAIRMAN PERATA: Yes.

13 SECRETARY WEBB: Padilla.

14 SENATOR PADILLA: Aye.

15 SECRETARY WEBB: Padilla Aye.

16 CHAIRMAN PERATA: Mr. Jones, when we last met in  
17 a different room, we had concluded the public testimony. You  
18 had indicated that there was one document you hadn't had a  
19 chance to see and review.

20 There was plenty of discussion, or at least the  
21 presentation was made about number of things that I'm sure you'd  
22 like to respond to, so it's all yours.

23 MR. JONES: Committee Members, and Mr. Chairman,  
24 I'm very pleased to finally have the opportunity to appear  
25 before you to address any questions you may have concerning my  
26 confirmation as Deputy Secretary of Policy Enforcement for the  
27 Labor and Workforce Development Agency.

28 I'm aware you have a large agenda, and I want to



1 be respectful of your time. I do feel, however, that it's  
2 important that I be permitted to provide at least a summary  
3 response to the comments made by some of the lawyers and  
4 representatives that testified in opposition of my confirmation  
5 last Thursday.

6 Of course, they raised a number of complex  
7 issues, some of which are currently in active litigation before  
8 the courts and the State Personnel Board. For me to be able to  
9 fully respond to all the issues could take hours, and I know we  
10 don't have that luxury here. I can, however, give an  
11 abbreviated 15-minute version if that's permissible. Thank you.

12 Right up front, I want to assure all of you that  
13 I'm fully resigned to the fact that Mr. Curtin probably will  
14 never be a close personal friend of mine, but I -- the  
15 underlying facts he raised concerning the ethical issues I  
16 immediately faced in the DLSE law department when I came on in  
17 August of 2005 have presented a puzzle to many of those not  
18 directly involved in this matter.

19 It was very surprising that Mr. Lorens elected to  
20 come before you last Thursday, as her testimony has presented  
21 many of the most important pieces needed to put that puzzle  
22 together. So, I want to her testimony right up front with  
23 respect to Miles Locker's termination and other ethical issues  
24 that I faced.

25 I need to preface those comments with the fact  
26 that when I came on board as Labor Commissioner's Chief Counsel  
27 on August 1st, 2005, an investigation of Mr. Locker's conduct in  
28 intentionally and secretly leaking an internal-use-only memo to

1 the plaintiff in a recently filed lawsuit against the Labor  
2 Commissioner, Donna Dell, was well under way. In fact,  
3 Mr. Locker was not actually terminated until after an 8-month  
4 investigation had been completed, a 23-page formal Notice of  
5 Disciplinary Action, and supporting 791 pages of documents had  
6 been prepared and delivered to Mr. Locker. This was over six  
7 months after I arrived.

8 During all this time, Mr. Locker remained on full  
9 pay. As Ms. Dell states in her letter that she asked me to  
10 deliver to you last week, Mr. Locker's termination was caused by  
11 his election to censure the information he was providing to her  
12 as his client, while at the same time privately meeting with and  
13 providing internal documents to plaintiffs and attorneys who  
14 were engaged in litigation against her, his client.

15 That brings me to testimony last week by  
16 Ms. Lorens. As she stated, Ms. Lorens is currently the  
17 plaintiff's attorney in a large class action meal and rest  
18 period case against the Brinker Restaurant Corporation.

19 As you may also remember, Mr. Curtin mentioned  
20 that Mr. Locker had prosecuted and settled a major meal and rest  
21 period case for \$10 million on behalf of the Labor Commissioner  
22 in 2002. That case was against the same defendant, the Brinker  
23 Restaurant Corporation. In fact, Mr. Locker's settlement of  
24 that meal and rest period case against Brinker covered much of  
25 the same time period as the time of Ms. Lorens' subsequent meal  
26 and rest period case against that same defendant.

27 In the prior DLSE lawsuit, Mr. Locker was  
28 assisted by another former attorney for the Labor Commissioner,

1 Mr. Timothy J. Kolesnikow. Mr. Kolesnikow left DLSE almost  
2 immediately after he and Mr. Locker settled the DLSE case  
3 against Brinker in August 2002 and went into private practice.

4 If you recall, last week Ms. Lorens urged that I  
5 should not be confirmed because of my actions in her against  
6 Brinker. She said I had personally made it difficult for her to  
7 get documents she needed for the prosecution of her class action  
8 lawsuit, and that I had somehow favored the defense counsel in  
9 her case.

10 This brings us to why I was surprised she  
11 testified against me. On March 14, 2006, I received an e-mail  
12 from an attorney who was defending a company in a private  
13 lawsuit that had been brought concerning allegations of failure  
14 to provide the company's employees with meal and rest breaks.  
15 That company was Brinker.

16 Before this date, I was not aware that this same  
17 company had settled a lawsuit brought by the Labor Commissioner  
18 over the same issues in 2002. As part of that settlement, the  
19 company paid the \$10 million Mr. Curtin referred to.

20 I was also unaware that Mr. Locker had been the  
21 lead attorney for the Labor Commissioner, along with  
22 Mr. Kolesnikow, in the 2002 case. I learned later that the new  
23 private lawsuit that had been brought against Brinker was filed  
24 by Ms. Lorens.

25 The defense attorney who wrote me stated he was  
26 concerned about a letter his firm had received from our office  
27 in early 2005, in which we falsely informed his firm that after  
28 a statewide search of our offices and data bases, we could find



1 ~~no records of our prior lawsuit against his client, the Brinker~~  
2 Corporation. The defense attorney who received this response of  
3 no records had since become aware that even before his office  
4 had made its Public Records Act request in 2005, copies of  
5 documents had been supplied to Ms. Lorens by our office, and  
6 that she was now refusing to share those documents with opposing  
7 counsel.

8 I had the matter look into immediately and was  
9 informed the documents were in fact supplied to Ms. Lorens by  
10 DLSE over a year before I received this inquiry. But we could  
11 not identify what was given to Ms. Lorens, as no record had been  
12 made regarding the request except for a log entry that showed  
13 that the response to the items in question was handled by Miles  
14 Locker.

15 This false certification was, at the very least,  
16 a serious breach of our statutory duties under the Public  
17 Records Act. This was especially true, given our having already  
18 provided them to the other side.

19 I directed that an apology be sent to defense  
20 counsel and that we immediately supply the appropriate documents  
21 to them.

22 Unfortunately, this was not the only improper  
23 conduct by us in this case. Two weeks later, on March 30, 2006,  
24 I received a letter from Brinker's Assistant General Counsel  
25 informing me that almost one year -- for almost one year,  
26 Brinker had been repeatedly attempting to secure a letter from  
27 Mr. Locker that the DLSE was legally required to provide to  
28 Brinker under the terms of the prior settlement agreement that

1 ~~he had negotiated and signed in August of 2002. The agreement~~  
2 required DLSE to issue a written statement admitting that DLSE  
3 had conducted an extensive year-long investigation of Brinker  
4 Restaurant Corporation with respect to its compensation  
5 practices from October 1, 1999 to December 31, 2001 in regards  
6 to compliance with, among other items, meal and rest periods as  
7 required by the relevant wage order and Labor Code sections.  
8 This was the same issue, covering the same period of time, that  
9 Ms. Lorens was now suing Brinker on again.

10 I immediately forwarded defense counsel's letter  
11 to the attorney assigned to supply the previously requested  
12 documents to Brinker's attorney -- attorneys -- with  
13 instructions to immediately supply the require letter also.

14 I found out over a month later that my attorney  
15 never prepared or sent the letter to Brinker as I directed. She  
16 told me she just hadn't gotten around to it yet. So, I assigned  
17 it to another attorney in my office, and it was issued that same  
18 day.

19 Then in mid-May 2006, the same previously  
20 assigned attorney from my office informed me that Ms. Lorens had  
21 sent her a sworn declaration for signature by Mr. Kolesnikow,  
22 our former attorney on that case, that he and Mr. Lorens wanted  
23 my attorney to review and approve for filing in her case.  
24 Mr. Kolesnikow was the former Labor Commissioner attorney who  
25 had prosecuted the prior case with Mr. Locker.

26 Because this declaration contained privileged  
27 work product information of the Labor Commissioner, including  
28 opinions by the Labor Commissioner's former attorney, as to why

1 ~~certain actions were taken in the earlier case, I and my~~  
2 assistant chief counsel determined that it could not be utilized  
3 without constituting a waiver of the Labor Commissioner's  
4 privilege.

5 Based upon my concern about such possible waiver,  
6 I sent a personal 8-sentence letter to all counsel, informing  
7 them of my decision without disclosing the contents of the  
8 declaration. It was this letter that Ms. Lorens referred to  
9 last week as being "scary" and having caused her and  
10 Mr. Kolesnikow to, quote, "fear criminal prosecution."

11 Ms. Lorens has already provided you with a copy  
12 of that letter, and I also have copies here.

13 I am still perplexed as to why this letter caused  
14 these two experienced trial lawyers so much personal concern.

15 In any event, at that point I was hopeful that we  
16 were indeed through with our problems with Ms. Lorens' case.  
17 And of course, I was wrong.

18 Within a few days of my letter concerning the  
19 Kolesnikow declaration, my previously assigned attorney informed  
20 me that we had, quote, "inadvertently" unquote, supplied legally  
21 protected records of Brinker to Ms. Lorens' firm in this case.  
22 That same attorney informed me that providing those records was  
23 in fact a misdemeanor, and in fact it is.

24 At this point, I was having some very serious  
25 concerns about the state's possible legal liability for our  
26 repeated improper actions that were benefiting only the  
27 plaintiffs in Ms. Lorens' lawsuit against Brinker. I  
28 immediately asked if my attorney had notified the defense



1 ~~counsel we had made this improper disclosure of their client's~~  
2 confidential documents, that included the employer's and  
3 employees' names and Social Security numbers, and was told that  
4 she had not.

5 So, on May 30, 2006 I sent an e-mail to her,  
6 asking what possible legal basis she thought we could have for  
7 not letting Brinker know of our most recent mistake in  
8 improperly releasing the confidential records of its employees.  
9 When I got no reply, I sent another e-mail the next day. On June  
10 1st, she sent me a reply stating that she guessed she had mixed  
11 feelings about the need for us to disclose this matter to the  
12 defense attorneys.

13 Since there could be no question that we had an  
14 absolute legal and ethical obligation to immediately send this  
15 information to Brinker's counsel, I ordered her to prepare the  
16 letter for my review. I received the draft of the letter from  
17 her six days later. I then directed that it be sent.

18 Please understand that all of this was occurring  
19 during the time I was making very serious efforts to have DLSE  
20 recover from the prior unethical conduct of Mr. Locker, and to  
21 secure for DLSE a public reputation of integrity and fairness to  
22 all parties.

23 I believe it was at this point that I first began  
24 to really appreciate Ms. Dell's decision to leave the Labor  
25 Commissioner and return to private practice. However, I pressed  
26 on. I wondered what else we could possibly do to make it appear  
27 we were intentionally inferring in Brinker's defense of  
28 Ms. Lorens' private class action lawsuit against it.

1                   ~~You can imagine my surprise then when, in May of~~  
2       2007, I received an automatic notification from the court of  
3       appeal that Mr. Locker had joined the case as the attorney for  
4       an amicus group that was supporting Ms. Lorens' case against  
5       Brinker. When Mr. Locker subsequently orally argued the case  
6       before court of appeal, I had further legal liability concerns.

7                   There's one thing about the entire issue of  
8       attorney misconduct that I want to make certain is in the  
9       record. I have never had any concerns whatsoever about the  
10      trustworthiness of any but a very few of the attorneys who  
11      worked under my supervision for the almost two years I was Chief  
12      Counsel at DLSE. I found almost all of them to be highly  
13      dedicated lawyers who had no desire to act in any but the most  
14      ethical manner. In fact, the support I've been receiving this  
15      past week from a number of them and many other DLSE employees  
16      has been truly gratifying.

17                  With respect to the comments last week by  
18      Ms. Lorens and the other outside attorneys and employee  
19      representatives, I can only say that I'm disappointed that those  
20      with ongoing litigation and case presently pending before the  
21      State Personnel Board have chosen this venue to seek some sort  
22      of advantage.

23                  I have a timeline with me and copies of all the  
24      relevant documents for everything that I've said up to this  
25      point, and I'd be happy to leave those with you when we get  
26      through here.

27                  With that abbreviated explanation of the lawyer  
28      ethics problems I encountered upon joining the Labor

1 ~~Commissioner as her Chief Counsel and later as the Acting Labor~~  
2 Commissioner myself, I'd like to very briefly comment on the  
3 statistics offered last week to show that I somehow failed as  
4 the Acting Labor Commissioner to enforce the Labor Code and to  
5 collect wages for employees.

6           Simply put, those who testified to this  
7 contention appear to have been relying exclusively on statistics  
8 on our web site that relate only to the DLSE Bureau of Field  
9 Enforcement. It's clear from their explanation that they simply  
10 don't understand what these public figures actually show.

11           To do this, I'd like to give you, the Committee,  
12 a table of what's there, if that's possible.

13           The first issue that was raised was wage  
14 collections, which happens to be the first table. Let me tell  
15 you really quickly what this is. This is from our web site,  
16 from DLSE's web site. It shows these items broken down by year  
17 as reported.

18           The issue we're talking about generally is wages  
19 that are collected. This is not wages that are assessed. This  
20 is wages that are actually collected.

21           I've broken out the public works aspect of this  
22 because, as you'll see, that runs its own course and I can  
23 explain what's going on there.

24           But with respect to wage collections, the first  
25 contention made was that in 2006, when I was Acting Labor  
26 Commissioner, and that's true, we collected fewer wages from  
27 workers than we show we collected in other years, with special  
28 emphasis being placed on 2002. And initially I want to stress



1 ~~that, as can be seen from the table, 2002 is a real anomaly if~~  
2 you look at the wages. It's twice that was collected in the  
3 prior year, and twice what was collected in subsequent year.

4 It also happens to be the same year the \$10  
5 million settlement with Brinker was concluded.

6 I have checked with our collection office, and  
7 because of the money that comes in, and the way it was done in  
8 those days, And I'll tell you in a minute how I've tried to fix  
9 this, it's -- they would allocate money sometimes to BOFE wage  
10 collection, sometimes to litigation. And remember, we bring in  
11 another \$40 million a year from our wage claims adjudication  
12 unit. So, how the money is allocated has always been rather  
13 fluid, and Ms. Dell and I tried to put some restrictions on  
14 that, and I think they're working. I'll explain that to you.

15 This type of allocation was a practice Labor  
16 Commissioner Dell and I stopped in 2005, which was allocating  
17 monies that came in from lawsuits from prior years to the BOFE  
18 amounts for that year. We did this because to include these  
19 amounts presents a distorted picture of what our Bureau of Field  
20 Enforcement is actually doing in any one year. Often such legal  
21 settlements are unrelated to any BOFE activity.

22 In fact, had I elected to include the \$7.75  
23 million settlement with Denny's Ms. Dell and I entered into in  
24 2006, that 4.6 million figure would be 12.35 million. We didn't  
25 do that.

26 What is even more important, however, is -- and  
27 this is the very basic understanding of this -- is that the wage  
28 collection figures for any year actually reflect Bureau of Field

1 ~~Activities [sic] Enforcement activities in prior years. This is~~  
2 because wage recoveries are the result of audits usually that.  
3 are first performed by the employers and then verified by our  
4 Bureau personnel. These audits almost always take at least six  
5 months or more to complete. We then often need to take legal  
6 action to enforce the amounts found due even when -- before we  
7 collect them.

8 Even when the employers agree to pay what they  
9 owe, payment plans are often worked out with the employers so  
10 that they can continue to operate and employ the employees.

11 Keeping in mind that I was Acting Labor  
12 Commissioner until June of 2007, I think it should be easy to  
13 see that the results of my enforcement activities are more  
14 accurately reflected by the 2007, \$13.6 million figure.

15 The second chart -- the second complaint that was  
16 in one or a couple of the letters actually, was about  
17 inspections and citations in 2006. Again, you'll see the 2002  
18 figures that I was being compared against are unusually high.

19 I've been informed that we cannot verify what  
20 made up the 2002 inspection figures. However, we need again to  
21 understand why the six figures are as they are.

22 There are many factors to be considered, but  
23 here's the most important one. If you'll look again at  
24 inspection and citation figures from 2003 to 2006, you'll see  
25 that they've been steadily decreasing. You will also see that  
26 the efficiency reflected in the number of citations to  
27 inspection had been steadily increasing, and that's the last  
28 column, but not at a rate we wanted.

1                   When I saw these figures in early 2006, I and my  
2 Deputy Chief, Lupe Almaraz, determined that there were two major  
3 problems in BOFE. First, the BOFE investigators were only --  
4 were only responding to complaints and were not doing any  
5 self-initiated inspections of employers.

6                   Second, the investigators had not received any  
7 formal training for a long period of time. I immediately  
8 ordered that all BOFE investigators and all their supervisors be  
9 provided extensive training in what they were required to do,  
10 and immediately start -- and they immediately start engaging in  
11 proactive inspection activity. This training was held  
12 statewide, and I personally attended and participated in all the  
13 sessions. This was all done in 2006.

14                  Again, I think the 2007 figures are a pretty good  
15 indication of how effective we were in what we were doing.

16                  The next to the last one, and these are very  
17 short -- and I really do want to thank you for indulging me  
18 here -- is the license applications. And we have license  
19 revocations, denials and suspensions.

20                  You can see by those figures, they really don't  
21 tell you much, but what the people that are raising this issue  
22 don't seem to understand is, the figures that they're relying on  
23 only reflect appeals of denials, suspensions and revocations.  
24 If we do a good job in denying, suspending and revoking  
25 licenses, there shouldn't be any appeals.

26                  In fact, as you can see from the chart, there  
27 have been no appeals of any revocations in either garment or  
28 farm licensing since 2001, and no appeals of suspensions since



1 2003.

2 Overall, the appeals of denials have been steady  
3 from zero to three since 2002. You have to understand again,  
4 almost all denial appeals are based on actions that were taken  
5 in prior years anyway.

6 The final one is Public Works Debarments. Here  
7 again, debarment actions are based upon repeated violations by  
8 contractors of unusually long periods -- over a long period of  
9 time. They're very serious actions and require a great deal of  
10 investigation and preparation by specialized DLSE attorneys in  
11 Public Works.

12 When I first arrived in 2005, August, I  
13 immediately became very concerned with what I saw was not enough  
14 activity in debarments. I was informed that this due to the  
15 fact we only had two Public Works attorneys in the division; one  
16 an on leave, disability leave, and those were the only people  
17 who could do this work, and they simply didn't have sufficient  
18 time to undertake these cases.

19 So what did I do? I acted to add two additional  
20 attorneys to the Public Works unit: one for the specific  
21 purpose of increasing debarment activity. And that was my  
22 justification for getting the additional money to add those  
23 people.

24 So as you'll see, debarments have been increasing  
25 since then.

26 Finally, there's one last item I'd like to  
27 clarify before I take your questions, and that's about  
28 Mr. Locker's case. A serious misconception seems to have

1 ~~resulted or may have resulted from some of the things that were~~  
2 said here last week concerning the status of Mr. Locker's State  
3 Personnel Board appeal of his termination.

4 Mr. Locker has not been either exonerated or  
5 reinstated as a result of his of appeal to the State Personnel  
6 Board. The State Personnel Board very recently in March acted  
7 to reject the proposed decision of the hearing officer in his  
8 case, and to decide the case itself based on the record of his  
9 10 days of hearings, the formal briefs that were filed by his  
10 team of attorneys, and some additional oral argument.

11 In announcing its decision to decide the case  
12 itself, the State Personnel Board attached a copy of the hearing  
13 officer's recommendation in which he determined that Mr. Locker  
14 did in fact engage in multiple acts of misconduct. However, the  
15 hearing officer also recommended that Mr. Locker's discipline be  
16 reduced to a one-year suspension, which is virtually unheard of  
17 in state disciplinary appeals, as it equals over \$150,000 in  
18 lost wages and benefits.

19 I don't know why the State Personnel Board  
20 determined it wanted to decide the case itself, but I do know  
21 that the findings of fact made by the hearing officer fully  
22 support findings of unethical conduct by Mr. Locker in the  
23 performance of his duties as an attorney.

24 Given that this case is still pending before the  
25 State Personnel Board, I want to be careful what I say, as I  
26 certainly don't want to prejudice the case in any way.

27 In closing, I want to thank you for allowing me  
28 the opportunity to set the record straight with respect to what

I did have one of the other attorneys take a look at what was really going on there. And I have to tell you, I don't think we have sufficient evidence for something of that nature.

In fact, it could be argued that we just got extremely gross negligence in the way we were operating that department. But I'd hate to think that there wasn't something going on other than that.

CHAIRMAN PERATA: We'll take a ten-minute break so her fingers don't fall off.

[Thereupon a brief recess was taken.]

CHAIRMAN PERATA: Rules Committee will reconvene.

I wanted to talk to you about the gag order that we were talking about or has been discussed and the memo.

Was this the eight lines that you thought was confusing, or was this something else?

MR. JONES: The eight lines that I thought were confusing was what Ms. Lorens was talking about.

The memos I don't think are confusing at all.

CHAIRMAN PERATA: If you had it to do over again, would you?

MR. JONES: Would I do exactly the same thing I did in everything that I've done? Obviously not.

CHAIRMAN PERATA: No, just in this one instance.

MR. JONES: In this one instance, I would do it a little differently, but I would do the same thing.

This is not something I took lightly or did on my own. I consulted with ethics experts before I did this. And



1 ~~what I was concerned about -- and there are two memos, and I~~  
2 think you have both of them, but I have more copies of those,  
3 too.

4 We had the situation that had arisen where  
5 Mr. Locker had gone and given a speech on matters that were in  
6 active litigation against the Labor Commissioner at the time he  
7 gave the speech. She -- she told him in advance, when she --  
8 after she became aware that he was the person who had leaked the  
9 confidential memo to the plaintiff in a case against her, she  
10 told him she did not want him to go and speak on anything that  
11 had to do with her litigation, her policies, that area that she  
12 was responsible by statute to interpret and enforce. And as her  
13 attorney, he did not -- she did not want him to go out and talk  
14 publicly about that, because she was concerned about what the  
15 result would be.

16 The result happened before I got there also, but  
17 very shortly before I got there.

18 He went and gave the speech anyway, where he  
19 publicly ridiculed and criticized the position of his client.  
20 Now, this caused me a great deal of concern because I didn't  
21 think that it was something you had to tell attorneys. You  
22 know, I thought it was pretty -- pretty basic that if you had a  
23 client, you don't go out and publicly ridicule their legal  
24 position, especially in ongoing litigation. Or, you don't go  
25 out and comment why that is wrong, her position is wrong.

26 So, I was very concerned about the impact on the  
27 other attorneys. And I want to make one thing really clear, is  
28 that Mr. Locker had -- was probably the best known attorney in

1 ~~enforcement in the state with respect to the Labor~~  
2 Commissioner's office. And he brought a lot of attorneys into  
3 the Labor Commissioner's office. He had mentored a lot of  
4 attorneys in the Labor Commissioner's office, and they looked up  
5 to him.

6 And to have someone that they looked up to engage  
7 in this conduct and take the position there's nothing wrong with  
8 it, I didn't want that to become a huge problem. And so, what I  
9 did was, I -- and you can read the memo -- I said how much I  
10 appreciated their willingness to go out and talk -- you know, a  
11 number of department heads in legal departments since have told  
12 me, "I can't get my attorneys to go out and give speeches on my  
13 behalf," and our attorneys always willing to do that -- but that  
14 I wanted a period where we could get the expert in, and that the  
15 outside expert could let the people know what's expected of  
16 them. And so that's what I did.

17 And as soon as we got to the point, I issued a  
18 new policy. And that policy was not a policy the ACLU liked,  
19 but that new policy has been followed ever since, and it has --  
20 as far as I know, we have had absolutely no problems with that  
21 new policy.

22 So, the way -- you know, what I -- the words I  
23 used, I made it clear it was a temporary policy, and that we  
24 were just concerned. And I just didn't want anybody to get put  
25 into that situation, and I certainly didn't want the Labor  
26 Commissioner's legal position to be any further compromised by  
27 her own attorneys.

28 CHAIRMAN PERATA: We heard from somebody that

1 ~~submitted a letter that there was kind of a pall over the~~  
2 office.

3 MR. JONES: Well, that was -- there are some  
4 attorneys -- there were attorneys that were not pleased with the  
5 fact that -- that I was doing what I thought was -- was  
6 responsible. But there's a lot of attorneys who thanked me.

7 And so, I don't know what to say, other than what  
8 I was trying to do is bring some integrity to our department.  
9 And I just find it curious that I'm here because of that.

10 But I would like these things to play out in the  
11 courts and in the State Personnel Board, and not here.

12 CHAIRMAN PERATA: Okay.

13 I'm going to hold this in Committee. I'm not  
14 quite here yet. There's a lot of hearsay, he said-she said.

15 I think what you said today is important to be  
16 evaluated and not on the run. Have more time on your clock, so  
17 I'm just going to keep it here to give me a little bit more time  
18 to think about it.

19 MR. JONES: You're doing my weight loss program.

20 [Laughter.]

21 MR. JONES: I do have a package of these  
22 documents. And as all of your staff, I think, will tell you,  
23 I'm more than willing to spend all the time that's necessary in  
24 going through this. It's a ten-day hearing just in that one  
25 issue.

26 CHAIRMAN PERATA: I appreciate it.

27 MR. JONES: But I do have those documents, and  
28 I'll leave them here.



1 ~~CHAIRMAN PERATA: Thank you.~~

2 MR. JONES: Thank you very much for considering  
3 me anyway.

4 CHAIRMAN PERATA: If this weight thing works,  
5 maybe we can get together later and --

6 MR. JONES: Have a drink?

7 CHAIRMAN PERATA: No, make some money.

8 [Laughter.]

9 CHAIRMAN PERATA: Our final two are from the  
10 Department of Rehabilitation: the Director, Anthony Sauer, and  
11 Luciana Profaca, Chief Deputy Inspector.

12 Welcome. I appreciate your forbearance for  
13 taking you out of order.

14 MR. SAUER: Thank you.

15 CHAIRMAN PERATA: Whoever would like to go first  
16 may.

17 MR. SAUER: I think I will go first.

18 I would agree about the weight loss program,  
19 even just anticipating this.

20 [Laughter.]

21 MR. SAUER: It's very stressful.

22 SENATOR BATTIN: So, you're suggesting that  
23 Senator Perata hold you over for two consecutive weeks?

24 [Laughter.]

25 MR. SAUER: No, no. Just the last  
26 week-and-a-half have been enough preparing for this.

27 Good afternoon, Chairman Perata and Committee  
28 Members. I'm proud to be here before you as Governor

## EXHIBIT 2





LORENS & ASSOCIATES, APLC, Counselors at Law

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L. Tracee Lorens

Wayne Alan Hughes, Of Counsel

January 4, 2005

Division of Labor Standards Enforcement  
7575 Metropolitan Dr., Room 210  
San Diego, CA 92108

Re: California Public Records Act; Information Regarding Brinker Restaurant Corporation

To Whom It May Concern:

It is my understanding that your state agency may have information regarding an investigation of Brinker Restaurant Corporation (hereinafter referred to as "Brinker") concerning their overtime practices, as well as their practices with respect to the furnishing of rest and meal breaks to their employees.

Pursuant to the California Public Records Act (Government Code §6250, et seq.) we request that a copy be provided to us of all documents containing the following information:

- (1) All complaints and related documents concerning Brinker's overtime practices and practices with respect to the furnishing of rest and meal breaks to their employees filed since January 1, 2000, whether resolved, pending, or currently under investigation; and,
- (2) All documents provided to the DLSE by Brinker pursuant to the Division's investigation of Brinker's overtime practices and/or practices with respect to the furnishing of rest and meal breaks to their employees since January 1, 2000; and,
- (3) Any and all time records provided to the Division by Brinker pursuant to its investigation of Brinker's overtime practices and/or practices with respect to the furnishing of rest and meal breaks to their employees since January 1, 2000; and,
- (4) Any and all documents provided to the Division by Brinker in response to any subpoenas issued to Brinker by the Division with respect to the Division's investigation of Brinker's overtime practices and/or practices with respect to the furnishing of rest and meal breaks to their employees since January 1, 2000; and,

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(5) Any and all documents which prove or tend to prove whether employees of Brinker were exempt or non-exempt from the payment of overtime since January 1, 2000; and,

(6) Any and all documents that prove or tend to prove whether employees of Brinker were furnished rest and meal breaks since January 1, 2000; and,

(7) Any and all correspondence between Brinker and the Division concerning the investigation of Brinker's overtime practices and/or practices with respect to the furnishing of rest and meal breaks to their employees since January 1, 2000; and,

(8) Any and all findings resulting from an investigation by the Division of Brinker's overtime practices and/or practices with respect to rest and meal breaks for their employees since January 1, 2000.

We are willing to pay any fees attendant with this request. However, please notify us of the estimated cost, if any, so that this request may be expedited.

Thank you for your time and prompt consideration regarding this matter.

Yours truly,

LORENS & ASSOCIATES, APLC

L. Tracee Lorens

LTL:jljg

cc: Client (via mail only)  
Michael Singer, Esq. (via facsimile only)  
Bill Turley, Esq. (via facsimile only)

## EXHIBIT 3





## DEPARTMENT OF INDUSTRIAL RELATIONS

## DIVISION OF LABOR STANDARDS ENFORCEMENT

## LEGAL SECTION

455 Golden Gate Avenue, 9th Floor  
San Francisco, CA 94102  
(415) 703-4863

MILES E. LOCKER, Attorney for the Labor Commissioner

W/C 

April 1, 2005

L. Tracee Lorens  
Lorens & Associates  
1202 Kettner Blvd., Suite 4100  
San Diego, CA 92101

Re: Public Records Act Request -- Brinker Restaurant Corporation

Dear Ms. Lorens:

This is in response to your letter of January 4, 2005, in which you requested various records under the control or custody of the Division of Labor Standards Enforcement ("DLSE") concerning claims and investigations involving Brinker Restaurant Corporation ("Brinker") for meal and rest period violations or overtime practices, from January 2000 to the present.

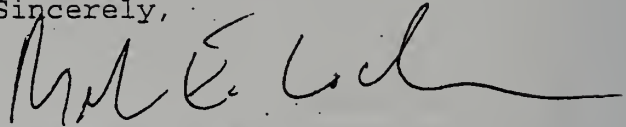
In a subsequent telephone conversation, you agreed to limit the request for records regarding meal and rest period violations to the time frame from August 8, 2002 (the date of DLSE's settlement with Brinker of a lawsuit we had filed regarding these issues) to the present.

Notices were sent to all of our Wage Adjudication and Bureau of Field Enforcement ("BOFE") offices for records that would be responsive to your request. Wage Adjudication offices handle individual claims filed pursuant to Labor Code §98. These offices did not have any claims or records of claims responsive to your request, though I should point out that closed Wage Adjudication files are generally purged 2 to 3 years after the date of closure. BOFE offices conduct DLSE initiated investigations of employers, pursuant to Labor Code §90.5, and may direct cases to the DLSE Legal Unit for prosecution pursuant to Labor Code §98.3. These BOFE offices had records of one DLSE investigation of Brinker meal and rest period violations, handled by our BOFE office in San Jose. Attached hereto please find copies of the records of this BOFE investigation, designated DLSE Case No. 35-39703. The records are complete, except we redacted employee social security numbers out of privacy concerns, and we are not producing e-mails or notes of telephone conversations between DLSE attorneys and BOFE deputies, based on attorney-client privilege.

L. Tracee Lorens  
April 1, 2005  
Page 2

Do not hesitate to contact me if you have any further questions.

Sincerely,

A handwritten signature in dark ink, appearing to read "Miles E. Locker". The signature is fluid and cursive, with a long horizontal stroke at the end.

Miles E. Locker  
Attorney for the Labor Commissioner

cc: Donna Chen



## EXHIBIT 4



LORENS & ASSOCIATES, APLC, Counselors at Law

---

McClintock Plaza, 1202 Kettner Blvd., Suite 4100 • San Diego, CA 92101

Telephone (619) 239-1233

Facsimile (619) 239-1178

L. Tracee Lorens

Wayne Alan Hughes, Of Counsel

May 24, 2006

\*VIA FACSIMILE (415) 355-5450 & U.S. MAIL\*

Robert A. Jones

DIVISION OF LABOR STANDARDS ENFORCEMENT

455 Golden Gate Ave., 9<sup>th</sup> fl.

San Francisco, CA 94102

Dear Mr. Jones:

Thank you for your correspondence of May 23, 2006. We believe there must be some misunderstanding.

You state in your letter "since this declaration was provided to us by Plaintiffs' counsel, it appears that Mr. Kolesnikow has elected to provide such information to at least one outside party." However, all of the information in Mr. Kolesnikow's declaration, and the proposed exhibits thereto, were produced by your office pursuant to a valid subpoena. When they were produced to this office they were simultaneously produced to the Defendants. Mr. Kolesnikow has never produced documents to this office.

Thus, your following statement "because such was done without the consent of the Labor Commissioner, I do not believe that any such unauthorized disclosure constitutes any waiver of the privilege on our part" would be inaccurate.

We respectfully request that you reconsider your position and advise us as soon as possible. We have a filing deadline rapidly approaching. The rights of approximately 60,000 workers in the State of California are at stake and your misunderstanding of the manner by which these documents were obtained, i.e., directly from your office via valid subpoena, could have an untoward effect on their legitimate legal claims.



Robert A. Jones

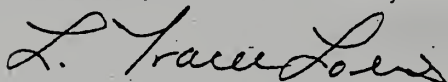
May 24, 2006

Page 2

Your choice of forwarding what might create an inaccurate picture to our opponents in the Hohnbaum, et.al. v. Brinker Restaurant Corp., et.al. lawsuit, is unfortunate. The general tenor of your letter could be interpreted to impugn Mr. Kolesnikow's reputation as well as Plaintiffs' counsel. ~~We wonder whether you have had any direct contact with the Defendants' attorneys and whether this~~ contributed to the inaccurate record of events leading to your statements of yesterday.

Yours truly,

LORENS & ASSOCIATES, APLC



L. Tracee Lorens

LTL:jljg

cc: Michael Singer, Esq. (via facsimile only)  
William Turley, Esq. (via facsimile only)  
Tim Kolesnikow, Esq. (via facsimile and mail)  
Mary Dollarhide, Esq. (via facsimile and mail)  
Kirby Wilcox, Esq. (via facsimile and mail)  
Barbara Johnson, Esq. (via facsimile and mail)  
Robert Walker, Esq. (via facsimile and mail)

## EXHIBIT 5





LORENS & ASSOCIATES, APLC, Counselors at Law

---

McClintock Plaza, 1202 Kettner Blvd., Suite 4100 • San Diego, CA 92101

Telephone (619) 239-1233

Facsimile (619) 239-1178

L. Tracee Lorens

Wayne Alan Hughes, Of Counsel

June 16, 2006

David Balter

**DIVISION OF LABOR STANDARDS ENFORCEMENT**

455 Golden Gate Ave., 9<sup>th</sup> fl.

San Francisco, CA 94102

Re: Brinker

Dear Counsel:

This correspondence will confirm our telephone conversation of June 16, 2006, and will serve as a cover letter for the documents we agreed to voluntarily provide to you during said telephone conversation.

As you will recall, you contacted me because the Labor Commissioner, Robert Jones, requested that you contact me regarding the DLSE production of documents in this case. You stated that Mr. Jones wanted you to tell me that he knows I have not done anything wrong as it relates to your production of documents in this case and that any confusion that has arisen was due to no fault on my part.

You explained that there had been an inadvertent disclosure by the DLSE of certain documents which you referenced as Bates No. DLSE830-978. I explained to you that I was unfamiliar with those documents as I had not reviewed them but, had volunteered to return them when Ms. Hipshman indicated she believed they had been inadvertently produced. I explained that I could not even recall what the documents entailed because, as stated above, I didn't review the documents and did not keep copies of those documents.

You explained that the documents appeared to be something employees had filled out for the Brinker International Savings Plan. You stated that Mr. Jones' concern was that the documents contained employee addresses, telephone numbers, and Social Security numbers. I assured you I was not familiar with the addresses, phone numbers, or Social Security numbers as I had not reviewed the documents and had returned said documents to the DLSE within days of receipt thereof. I also explained to you that when I served my subpoena the Defendants also sought copies of the same documents and that we had split the copy charges. I do not know whether or not the Defendants have returned their set of those documents to you, nor do I know whether or not anyone has even requested that they return those documents to you.

David Balter  
June 16, 2006  
Page 2

However, I did explain to you if the documents contained employee names, addresses, phone numbers, and/or Social Security numbers, similar documents had already been ordered produced in my case, i.e., Hohnbaum v. Brinker, et.al.; SDSC Case No. GIC834348. I volunteered to provide you with a copy of the briefing wherein I obtained an Order for the entire Class List, as well as the Order itself. I also explained that we were working under a Protective Order in this case but, that I believe the Court had determined the documents discoverable even prior to the execution of that Protective Order.

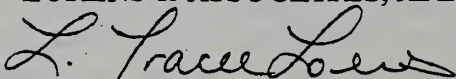
Thus, please find enclosed the following documents:

- (1) Plaintiffs' Points and Authorities in Support of Motion to Compel Class List;
- (2) Defendants' Points and Authorities in Opposition to Plaintiffs' Motion to Compel Class List;
- (3) Plaintiffs' Reply Brief on Motion for Class List;
- (4) The Court Order requiring production of the Class List, including names, last known addresses, last known telephone numbers, and Social Security numbers;
- (5) The Reporter's Transcript from the hearing on Plaintiffs' Motion for Class List;
- (6) A Stipulation between the parties regarding the Class List; and,
- (7) A copy of the Protective Order executed in our case.

I continue to have concerns about the appearance that the Labor Commissioner is assisting the Defendants in their attempts to defeat 60,000 California employees' claims. We have previously made a Public Records Act request for any and all documents referencing communications between the Labor Commissioner and Brinker and/or their attorneys in the Hohnbaum case. Could you please check for us on the status of that request? We have not yet received those documents.

If you have any further questions or comments please feel free to contact the undersigned at your convenience.

Yours truly,  
LORENS & ASSOCIATES, APLC



L. Tracee Lorens

LTL:jljg

Encls.

cc: Michael Singer, Esq. (via fax; w/o enclosures)  
William Turley, Esq. (via fax; w/o enclosures)





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